IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1222 of 2019

Arising Out of PS. Case No.-5 Year-2006 Thana- KADWA District- Katihar

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ESTABUL @ ESTAB, Son of Late Sheikh Aanu, Resident of Village-Khushalpur, Bail Tekri, P.S.-Kadwa, District-Katihar.

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Adv.
		Mr. Nilesh Kumar
		Mr. Ritwaj Raman
For the Respondent/s	:	Mr.Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT
Date : 05-11-2019

Sole appellant, Estabul @ Estab, has been found guilty for an offence punishable under Section 489(B) of the Indian Penal Code as well as Section 489 (C) of the Indian Penal Code and sentenced to undergo R.I. for seven years, respectively, with further direction to run the sentences concurrently with a further direction that the period having undergone during course of trial would be set off in accordance with Section 428 of the Cr.P.C., vide judgment of conviction dated 26.02.2019 and order of sentence dated 28.02.2019 passed by the learned P.O., FTC 1st, Katihar in connection with S.Tr. No. 267/2008, arising out of Kadwa P.S. Case No. 05/2006.

Pushkar Kumar Singh (PW-7), Officer-in-charge, recorded his self-statement on 01.02.2006 at the brick kiln of Dilip

Raj Singh at Soneli Pothi Colony, disclosing therein that one Alok Bubna telephonically informed him that a person, namely, Estabul, has come to purchase brick from his brick kiln having counterfeit Indian Currency notes. After entering the aforesaid information in the Station Diary, he along with other police personnel proceeded and, reached at the brick kiln at about 2:00 P.M, where he found one person, who was searched out in presence of two independent witnesses and during course thereof, from right side of his phulpant's pocket, six notes, each of Rs. 500/- denomination (totalling Rs. 3000/-), were recovered, out of which, three notes contained same and similar serial number and so, all were counterfeit. Accordingly, seizure-list was prepared in presence of seizure-list witnesses, who put their signature. Furthermore, in presence of owner of the brick kiln, namely, Dilip Raj Singh, aforesaid person was interrogated, who disclosed his name as Estabul @ Estab, S/o Sheikh Aanu, r/v Khushalpur, Bail Tekari, P.S.-Kadwa, District-Katihar and he further disclosed that aforesaid counterfeit currency notes were given to him by Ismail for its circulation which his father as well as wife were also knowing.

Accordingly, Kadwa P.S. Case No. 05/2006 was registered commencing with an investigation as well as submission of charge-sheet, keeping the investigation pending against remaining, facilitating the trial, meeting with the ultimate result, subject-matter of the instant appeal.

Defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. However, nothing has been adduced on behalf of defence.

Altogether nine witnesses have been examined on behalf of prosecution, who are, PW. 1 -Md. Aise, PW2- Nes Mohammad, PW3- Jakir Hussain, PW4- Kishan Kumar Sharma, PW5- Alok Kumar Bubna, PW6- ASI, Hasan Imam Khan, PW7- Pushkar Kumar Singh, PW8-Ashok Kumar, PW9- Dilip Raj Singh. Side by side has also exhibited Ext.1series- signature of seizure-list witnesses, Ext. 2- petition having filed by PW-6 (S.I., Hasan Imam Khan), Ext. 3- seizure-list, Ext.4- written report and Ext.5- Formal F.I.R. Counterfeit currency notes have been produced in Court and the same has been marked as material Ext.-I to 1/V.

As stated above, nothing has been adduced on behalf of defence.

Learned counsel for the appellant has assailed the judgment impugned mainly on three points; first point is, with regard to recovery. On that very score, it has been submitted that right from the initial version, there happens to be consistency amongst the PWs with regard to presence of Dilip Raj Singh at the time of recovery. When the evidence of Dilip Raj Singh (PW-9) is properly considered, it is apparent that recovery of counterfeit currency notes were from the possession of Alok Kumar Bubuna (PW-5). So far informant is concerned, he had shown recovery from right side of phulpant's pocket of appellant and so, this inconsistency is bound to adversly affect upon genuineness of prosecution case, more particularly, incredible prosecution version and, on this score alone, appellant is entitled for benefit of doubt. It has further been submitted that informant was not knowing since before with regard to presence of appellant at the brick kiln of PW-9, rather he came on an information given by PW-5 and the information is that PW-5 was knowing since before with regard to possession of counterfeit currency notes by the appellant. Unless and until the aforesaid currency notes would not have been placed before or handed over to the PW-5, he would not have been in a position to know about the notes being counterfeit and once the notes had gone in the hands of PW-5, then in that circumstance, there was no occasion for recovery from the possession of the appellant that too from right side of phulpant pocket as, the same was expected to be produced at the end of PW-5. Apart from this, it has also been submitted that considering the inconsistency amongst PW-5 (informant), PW-7 and the owner (PW-9), the recovery from the physical possession of the appellant has become doubtful. Consequent thereupon, instant appeal is fit to be allowed.

Learned Addl. P.P. while sticking upon the finding recorded by the learned lower court, has submitted that after all counterfeit currency notes have been recovered and production thereof by way of material exhibit, corroborates the same and further, considering the oral evidence of the respective witnesses, the same is found duly substantiated with regard to recovery from the physical possession of the appellant. Consequent thereupon, the appeal is fit to be dismissed.

From Ext.-3 (written report), it is apparent that when informant (PW-7) came at the brick kiln of Dilip Raj Singh, he found one person present there, who was searched out and during course thereof, six notes, each of Rs. 500/- denomination, were seized from right side of his phulpant pocket. From the seizure-list, it is evident that though there happens to be description under column-2 that it was recovered from right side of pocket but, there happens to be no disclosure that it was from right pocket of phulpant.

Be that as it may, Kishan Kumar Sharma (PW-4) and Alok Kumar Bubna (PW-5) stood as witness of seizure. PW-4, during course of his evidence, has disowned to know about the same. During course of examination-in-chief, neither the seizure-list was confronted to him nor his signature was shown to him but, after having been declared hostile, at para 6, he has admitted his presence over the seizure-list however, failed to identify the accused in dock and in likewise manner, any recovery from the possession of the accused. PW-5, in similar fashion, has deposed whereupon, he was also declared hostile. In para-4, he has admitted his signature over the seizure-list. However, he failed to identify the accused in dock.

PW-9, Dilip Raj Singh, is proprietor of brick kiln. He has deposed that on the alleged date of occurrence at about 2:00 PM while he was at his house, Alok Bubna dialled him. He happens to be my partner. He disclosed that one person has come to purchase brick and, for that he has paid six counterfeit currency notes. Each note was of Rs. 500/- denomination. He immediately reached at the brick kiln. That person was present there. O.C. was informed. He came, interrogated, recorded his statement as well as statement of his partner and then, on production by Alok Bubna, he seized counterfeit currency notes, which were handed over by the accused and for that, seizure-list was prepared and then, returned back to the police station along with counterfeit currency notes, accused. During cross-examination, he had stated that accused had not paid in his presence rather, Alok Bubna had disclosed that the person who is standing had handed over the amount.

PW-7 is informant, who during course of examination-in-chief, has stated that on 01.02.2006 at about 12:30 PM, Alok Bubna telephonically informed him that a person, namely, Estabul, has come along with counterfeit currency notes in order to purchase the brick from the brick kiln of Dilip Raj Singh. After having the same entered into Station diary, he along with other police personnel proceeded and reached at the brick kiln where, he searched out one person, who was present since before, in presence of Alok Bubna and Kishan Sharma and, during course thereof, from the right pocket of his phulpant six Indian currency notes, each of Rs. 500/- denomination, were seized, out of which, three notes were carrying same serial number whereupon, aforesaid currency notes were found to be counterfeit. Exhibited the seizure-list. Then has stated that after serving a copy thereof to the accused, got his LTI, recorded his self-statement. Identified the accused. Then thereafter, took up investigation and then, detailed the same, elaborately detailed the place of occurrence, recorded the statement of witnesses, got the counterfeit currency notes examined after taking order from the court and then, on account of transfer, he had handed over investigation. During cross-examination at para 12, he has stated that he reached at the place of occurrence at about 2:00 PM. At para 15, there happens to be reference with regard to statement of witness Alok Bubna, wherein he has stated that after receipt of relevant currency notes, he had kept the same in the cash box. In para 16, he has stated that he had not mentioned in the case diary with regard to inspection of the cash box. In para 18, he has further stated that on identification of Alok Kumar Bubna, he had searched the accused.

Now coming to status of remaining witnesses, it is evident that PW-1, PW-2, PW-3 have not supported the case of the prosecution and so, were declared hostile. PW-6 is a police official, who had produced the material exhibit in court. PW-8 is Ashok Kumar (part I.O.), who got the counterfeit currency notes examined after obtaining permission from the court.

After having minute observation, scrutiny of the evidences available on record, it is crystal clear that there happens to be inconsistency amongst the prosecution witnesses with regard to recovery of the counterfeit currency notes and that being so, appellant is found entitled for at least benefit of doubt. Consequent thereupon, the judgment of conviction and order of sentence recorded by the learned lower court is set aside. Appeal is allowed. Appellant is under custody, hence is directed to be released forthwith, if not wanted in any other case.

(Aditya Kumar Trivedi, J)

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