

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 146 of 2014**

- Jadulal S/o Samayan Sahu, Aged About 27 Years, R/o Village Darra, Giroudpuri, PS Bilaigarh, Distt. Baloda Bazar C.G.

---- Appellant**Versus**

- State Of Chhattisgarh Through Ps Kasdol, Distt. Baloda Bazar - Bhatapara C.G.

---- Respondent**CRA No. 98 of 2014**

- Janakram Sagar S/o Babulal Sagar Aged About 33 Years R/o Village - Mahkam Ps Kasdol Distt. Civil And Drev. Distt Baloda Bazar - Bhatapara C.G.

---- Appellant**Versus**

- State Of Chhattisgarh Through Distt. Magistrate Balodabazar-Bhatapara Distt. Civil And Rev. Baloda Bazar-Bhatapara C.G. ,

---- Respondent

For Appellants	: Shri N.K.Malviya, Advocate
For Respondent/State	: Shri Neeraj Mehta, PL

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Rajani Dubey

Judgment On Board By Manindra Mohan Shrivastava, J.**05/03/2019**

These appeals are directed against the impugned judgment of

conviction and order of sentence dated 29.11.2013 passed by the Second Additional Sessions Judge, Baloda Bazar in S.T. No.71/2013, by which the appellants in the aforesaid two appeals have been held guilty of commission of the offence and sentenced as described below:

Conviction	Sentence
Under Section 489-A/34 IPC	Imprisonment for life and fine of Rs. 1,000/- with default stipulation.

2. Prosecution case, as is unfolded from the records of the case is that a *mukhbir* information was received in the police station Kasdol on 12.02.2013 regarding fake currency notes kept with Janak Ram, one of the appellants and it is the case of the prosecution that on receipt of such information, when Janak Ram was caught hold of, from his possession, fake currency notes were recovered. On further enquiry from Janak Ram, according to the prosecution, he stated that co-accused Jadulal had prepared those fake currency notes whereafter, the Investigating Officer claims to have recovered the computer and other accessories alleged to be used in preparation of currency notes.

3. Prosecution, in order to bring home the guilt, examined the Investigation Officer PW-11, who deposed having recovered fake currency notes as also the computer used for the purpose of scanning papers to prepare fake currency along with all other accessories like monitor, printer, keyboard, mouse, scanner, CPU

used in the alleged commission of the offence.

During the course of trial, a report dated 25.3.2013 of Currency Note Press, Nasik Road, was also received from Assistant Works Manager of the press.

4. In order to hold the appellants in the two appeals, guilty for commission of the offence, learned trial court, relied upon the evidence of PW-11, Investigating Officer to prove recording of memorandum and recovery of seizure of fake currency notes from appellant Janak Ram and computer and other accessories used for preparation of fake currency notes from the other appellant Jadulal and also the report of the Bank Note Press that the currency seized were found to be fake.

5. The two main submissions of counsel for the appellants are that as far as the recovery of fake currency notes and the computer and other accessories said to be used for preparation of fake currency notes is concerned, it could be proved beyond reasonable doubt because both the independent witnesses of memorandum and seizure of prosecution particularly, PW-3 Jageshwar Das and PW-4 Kartik Das, have not supported the prosecution case and have turned hostile therefore, the conviction cannot be based on the solitary evidence of the Investigating Officer (PW-11). The second important submission of counsel for the appellant is that though the learned trial court has placed heavy reliance on the report of the Bank Note Press, Nasik Road, the said incriminating evidence made by the trial court was not disclosed to the accused/appellants nor

they were given an opportunity to explain those incriminating evidence in their examination under Section 313 Cr.P.C. therefore, the entire trial is vitiated and conviction is liable to be set aside.

6. State counsel on the other hand would submit that even though the independent witnesses of memorandum statement and seizure have not supported but they have admitted their signature in all those documents and the recovery of currency notes as also computer and other accessories have been proved from reliable testimony of Investigating Officer. According to him, there is no rule of thumb that in all cases memorandum and recovery are required to be supported by independent witnesses. He would argue that where the evidence of Investigating Officer is reliable and trustworthy, his evidence alone is sufficient to prove seizure of incriminating article and conviction could be based on such incriminating evidence.

7. Replying however, to the argument regarding non disclosure of the report of the Bank Note Press, State counsel would argue that the said report was received on the records of the trial court and this fact was very well known to the accused. He would argue that during the course of their examination under Section 313 Cr.P.C. or even before that the accused could have very well raised an objection that the said document was not formally admitted in evidence or that they are entitled to be given an opportunity to explain and also lead defence in rebuttal of the said incriminating evidence.

8. We have heard counsel for the parties and perused the judgment and records of the trial court.

9. After having heard counsel for the parties, we are of the view that the impugned judgment of conviction and order of sentence is liable to be set aside only on the ground that the incriminating evidence, which have been relied upon by the trial court that the report of the Bank Note Press, which records that the currency notes was fake, was neither formally admitted in evidence nor the appellants/accused were given an opportunity to offer their explanation against these incriminating evidence, during their examination under Section 313 Cr.P.C. Moreover, had it been disclosed to the accused/appellants, the accused could possibly have also exercised the right of leading defence evidence, if any. But, as we have seen from the records of the learned trial court, though the report of the Bank Note press was received and the trial court also mentioned regarding the same in one of the order sheet, it was formally not admitted in evidence. Even if for the sake of arguments, it is accepted that under Section 293 Cr.P.C., for proof of the contents of the said documents, it was not necessary to call the officer who had prepared the report, in any case, this was required to be disclosed to the accused during their examination under Section 313 Cr.P.C. because it constituted an incriminating evidence against the appellants and the appellants were, therefore, entitled to offer their explanation. We find from the impugned judgment that the learned trial court has relied upon these incriminating documentary evidence that what was seized from the possession of the appellants, was a fake currency note. Therefore, non-disclosure of these documents and denial of an opportunity to explain these circumstantial evidence by disclosing the same to the accused at the

time of their examination under Section 313 Cr.P.C., has vitiated and it cannot be said to be fair and consistent with the principles of natural justice.

Not only this, had it been disclosed to the accused, it was always upon for the accused to exercise their right to lead defence against disclosure. From this angle also, we are of the view that the impugned judgment has vitiated trial and cannot be sustained in law.

10. In view of above, we are inclined to set aside the impugned judgment of conviction and order of sentence and remand the case to the trial court to frame additional question under Section 313 Cr.P.C. with regard to the incriminating evidence of the report of the Bank Note Press and offer the accused/appellants opportunity to explain the same. Thereafter, the learned trial court shall also allow the appellants an opportunity to lead defence evidence, if any and then, decide the case.

The trial court shall also ensure that the entire proceedings are concluded within the outer limit of three months from the date of first appearance of the appellants/accused before the trial court.

11. The appellants shall appear before the trial court concerned on 15th of May 2019. Upon their appearance, the learned trial court shall release them on bail on each of them furnishing a personal bond in the sum of Rs. 25,000/- with one surety of the like sum to the satisfaction of the trial court.

The records of the case be remitted forthwith to the trial court.

Impugned judgment of conviction and order of sentence is set aside.

Sd/-

Sd/-

(Manindra Mohan Shribastava)
Judge

(Rajani Dubey)
Judge