IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.32 OF 2017

KARANSING LALLUSINGH YADAV)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Ms.Megha Bajoria, Appointed Advocate for the Appellant.

Mr.S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 30th JANUARY 2019

<u>ORAL JUDGMENT</u> :

1 The appellant/accused, by this appeal, is challenging the judgment and order dated 4th January 2017 passed by the learned Additional Sessions Judge, Kalyan, in Sessions Case No.278 of 2008, thereby convicting the appellant/accused of offences punishable under Sections 489B and 489C of the Indian Penal Code. For the offence punishable under Section 489B of the

Indian Penal Code, the appellant/accused is sentenced to suffer rigorous imprisonment for 7 years apart from imposition of fine of Rs.5,000/- and default sentence of simple imprisonment for 6 months. For the offence punishable under Section 489C of the Indian Penal Code, the appellant/accused is sentenced to suffer rigorous imprisonment for 5 years apart from imposition of fine of Rs.3,000/- and default sentence of simple imprisonment for 3 months. The learned trial court directed that substantive sentences of imprisonment shall run concurrently.

2 Facts leading to the prosecution as well as resultant conviction of the appellant/accused can be summarized thus :

(a) The appellant/accused was holding account in Dombivli branch of Abhinav Co-operative Bank, where on 11th August 2008, PW2 Vinita Mhaskar was working as a Cashier. On that day, the appellant/accused came to the bank and attempted to deposit forty currency notes of Rs.500/- denomination each in his account no.1178. PW2 Vinita Mhaskar was working as a Cashier. On that day, the appellant/accused came to the bank and attempted to deposit forty currency notes of Rs.500/- denomination each in his account no.1178. PW2 Vinita Mhaskar, Cashier, suspected those currency notes to be counterfeit. She, therefore, took the appellant/accused along with those forty currency notes to PW1 Mohan Lakhawade, Branch Manager of the said co-operative bank. There, in presence of PW3 Milind Kale, Junior Officer, the currency notes sought to be deposited by the appellant/accused were examined in ultraviolet rays machine. Those currency notes were found to be counterfeit currency notes. Therefore, PW1 Mohan Lakhawade gave intimation to Vithalwadi Police Station.

(b) In pursuant to the information given by PW1 Mohan Lakhawade, police came to the bank. The appellant/accused so also the currency notes sought to be deposited by him were taken to the Police Station Vithalwadi. The First Information Report (FIR) Exhibit 26 came to be lodged by PW1 Mohan Lakhawade, Branch

Manager. Accordingly, Crime No.114 of 2008 for offences punishable under Sections 489B and 489C of the Indian Penal Code came to be registered.

(c) The appellant/accused came to be arrested vide Arrest Panchnama Exhibit 31. Forty currency notes each of Rs.500/- denomination sought to be deposited by the appellant/accused in the Abhinav Co-operative bank came to be seized in presence of panch witness PW5 Nilesh Desale vide Seizure Panchnama Exhibit 32 on 11th August 2008 itself.

(d) During the course of investigation, on 19th August 2008, the appellant/accused made voluntary disclosure statement showing his willingness to produce the currency notes. The said statement Exhibit 36 came to be recorded in presence of panch witness PW5 Nilesh Desale. The appellant/accused then led panch witnesses and the Investigating Officer to his house situated at Section No.20, Ulhas Nagar. From his house, the appellant/accused took out a suitcase and from that suitcase he recovered forty-four currency notes each of Rs.500/- denomination, which came to be seized vide Seizure Panchnama Exhibit 34.

(e) On conclusion of routine investigation, the appellant/accused came to be charge-sheeted.

(f) The Charge for offences punishable under Sections 489B and 489C of the Indian Penal Code was framed and explained to the appellant/accused. He pleaded not guilty and claimed trial. In order to bring home the guilt to the appellant/accused, the prosecution has examined in all ten witnesses. The First Informant Mohan Lakhawade, Branch Manager of Abhinav Co-operative Bank, is examined as PW1. The report lodged by him is at Exhibit 26. Vinita Mhaskar, Senior Clerk, who was working as Cashier, is examined as PW2. Milind Kale, Junior Officer of Abhinav Co-operative Bank is examined as PW3. Mangesh Dudhane, watchman of Abhinav Co-operative Bank is examined as PW4. Panch witness Nilesh Desale is examined as PW5. Sadashiv Nathe, Police Head Constable, who carried the muddemal in two sealed packets is examined as PW6. PW7 Mallikarjun Kumbhar, Assistant Police Inspector, had sent the muddemal through PW6 Sadashiv Nathe to the Government Currency Note Press at Nashik. PW8 Pradeep Patil, Police Head Constable, had brought back the currency notes which were ultimately found to be counterfeit after their examination from the Government Currency Note Press, Nashik. PW9 Madhukar Salve, Police Sub-Inspector, had filed charge-sheet against the appellant/accused after completion of investigation. PW10 Hemant Kamlaskar, Supervisor of Government Note Press of Nashik had examined the seized currency notes and found them to be counterfeit. Exhibit 48 is the report of this expert.

(g) The defence of the appellant/accused was that of total denial. In his statement under Section 313 of the Code of

Criminal Procedure, the appellant/accused submitted that he wants to rely on one circular issued by the Reserve Bank of India. However, the same was not produced by the defence.

(h) After hearing the parties, by the impugned judgment and order, the learned trial court was pleased to convict the appellant/accused of offences punishable under Sections 489B and 489C of the Indian Penal Code. He was accordingly sentenced as indicated in the opening paragraph of this judgment.

3 I have heard Ms.Bajoria, the learned advocate appointed to represent the appellant/accused at the costs of the State. She argued that witnesses examined by the prosecution are interested witnesses as they are employees of the bank. They had not produced their identity cards while adducing evidence before the trial court. She further argued that handwriting on the pay-in-slip is not got examined by the prosecution. Procedure prescribed

by the Reserve Bank of India in cases relating to fake currency notes is also not followed by the prosecution. Investigating Officers including Shri Salunke is not examined by the prosecution. In submission of the learned advocate, the prosecution has not proved intention as well as knowledge in respect of currency notes being forged or counterfeit. Hence, the impugned judgment needs to be quashed and set aside.

4 As against this, the learned APP supported the impugned judgment and order of conviction and resultant sentence.

5 I have considered the submissions so advanced and also perused the record and proceedings including oral as well as documentary evidence produced by the prosecution. At the outset, let us examine whether the prosecution has successfully proved the fact that in all 84 currency notes each of Rs.500/- denomination came to be seized from the appellant/accused on 11th August 2008 and on 19th August 2008. Thereafter, one will

have to see whether those currency notes were proved to be forged or counterfeit currency notes by the prosecution. After establishment of these two facts, one will have to ascertain whether use of such counterfeit currency notes by the appellant/accused was with requisite mensrea. Mere using, receiving or selling as well as trafficking in forged or counterfeit currency notes is not enough to constitute offence under Section 489B of the Indian Penal Code. It is required to be proved that such act was with requisite knowledge or having reason to believe that subject currency notes were forged or counterfeit currency notes. Similarly, even for making out the offence of possession of forged or counterfeit currency notes made punishable under Section 489C of the Indian Penal Code, establishment of mensrea is essential.

6 For proving the fact that the appellant/accused was found using as genuine, forged or counterfeit currency notes, the prosecution is heavily relying on evidence of PW1 Mohan Lakhawade - Branch Manager of Dombivli branch of Abhinav Co-

operative Bank, PW2 Vinita Mhaskar - Cashier, PW3 Milind Kale – Junior Officer and PW4 Mangesh Dudhane – Watchman of the said bank. According to the prosecution case, the appellant/accused had approached PW2 Vinita Mhaskar, Cashier, on 11th August 2008 for depositing counterfeit currency notes in his bank account. The defence has not disputed the fact that the appellant/accused was holding the account in Dombivli branch of Abhinav Co-operative Bank. In this backdrop, it is in evidence of PW2 Vinita Mhaskar, who at the relevant time was working as Cashier with the bank, that the appellant/accused Karansing Yadav came at her counter at about 7.00 p.m. of 11th August 2008 with pay-in-slip, passbook and cash for depositing the same in his account. He deposed that she found the currency notes produced by the appellant/accused Karansing to be counterfeit because of several visible factors, and therefore, she took those currency notes to PW1 Mohan Lakhawade, Branch Manager. The appellant/accused was also taken to the Branch Manager of the bank. It is seen from evidence of PW1 Mohan Lakhawade, Branch Manager, that at about 7.00 p.m. of 11th August 2008, PW2 Vinita

Mhaskar, Cashier, came to him along with the appellant/accused and produced forty currency notes each of Rs.500/- denomination. PW1 Mohan Lakhawade, Branch Manager, testified that then he examined all those currency notes in ultraviolet rays, so also by handling them and found those currency notes to be counterfeit. He, therefore, informed this fact to Vithalwadi Police Station. PW3 Milind Kale, Junior Officer of the said Co-operative Bank, has deposed that he noticed the appellant/accused at the counter of PW2 Vinita Mhaskar, Cashier. Thereafter, PW2 Vinita Mhaskar, went to the Branch Manager with the appellant/accused and he was also called at the cabin of the Branch Manager. As per version of PW3 Milind Kale, in his presence, PW1 Mohan Lakhawade, Branch Manager, examined forty currency notes each of Rs.500/- denomination in ultraviolet rays and found those currency notes to be counterfeit. PW4 Mangesh Dudhane, Watchman of the bank, has also deposed about examination of the forty currency notes each of Rs.500/- denomination by PW1 Mohan Lakhawade, Branch Manager.

7 All these witnesses were cross-examined by the defence. However, material elicited from their cross-examination is, infact, supporting the case of prosecution. From cross-examination of PW1 Mohan Lakhawade, Branch Manager, it is brought on record that police seized forty currency notes each of Rs.500/- denomination after he verified the fact that all those forty currency notes were counterfeit. This witness admitted the fact that he was not knowing the fact as to who had written the concerned pay-in-slip. He had not given his appointment order to police. All these aspects are not going to the core of the prosecution case. Rather, this material shows that PW1 Mohan Lakhawade, Branch Manager, had handled the currency notes sought to be deposited by the appellant/accused in the bank and found them to be counterfeit. He had handed over those currency notes to police.

8 In a similar way, from cross-examination of PW2 Vinita Mhaskar, Cashier, it is brought on record that on 11th August 2008, she was working as Cashier and was doing the work

of receiving the cash as well as payment of cash. She had not put cancellation stamp on those currency notes. Similarly, the pay-in-slip was not mentioning denomination of the currency notes. One will have to keep in mind that as soon as the appellant/accused had produced forty currency notes for depositing the same in his account with PW2 Vinita Mhaskar, she became suspicious about genuineness of those currency note, and therefore, it was not expected of her to tell the appellant/accused that pay-in-slip produced by him was not mentioning the denomination as well as number of the currency notes sought to be deposited by him. There was no question of cancelling those currency notes unless and until those were declared to be counterfeit. Hence, there is nothing in cross-examination of PW2 Vinita Mhaskar to disbelieve her version.

9 From cross-examination of PW3 Milind Kale, Junior Officer, it is brought on record that the appellant/accused was standing in the queue in front of cash counter headed by PW2 Vinita Mhaskar. He had noticed this fact from a distance of ten to

twenty feet from that queue. From cross-examination of this witness, the defence has brought on record that PW1 Mohan Lakhawade, Branch Manager, had examined the currency notes under ultraviolet rays.

10 Thus, evidence adduced by these witnesses unerringly points out that forty currency notes each of Rs.500/- denomination, which were sought to be deposited by the appellant/accused in his account with the Abhinav Co-operative Bank were prima facie found to be fake and counterfeit. Evidence of these witnesses further shows that then police were called and those currency notes as well as the appellant/accused were given in custody of police. On the basis of report Exhibit 26 lodged by PW1 Mohan Lakhawade, Branch Manager, Crime No.114 of 2008 came to be registered against the appellant/accused.

11 PW5 Nilesh Desale, panch witness, has proved Seizure Panchnama Exhibit 32 by which forty currency notes each of Rs.500/- denomination came to be seized upon being produced by

PW1 Mohan Lakhawade, Branch Manager of Abhinav Co-operative Bank, on 11th August 2008 itself. PW5 Nilesh Desale deposed that in his presence, Panchnama Exhibit 32 came to be prepared by police and those currency notes came to be packed and sealed. This witness has spoken about arrest of the appellant/accused and Voluntary Disclosure Statement Exhibit 34 made by the appellant/accused on 19th August 2008 in his presence. As per version of this panch witness, then the appellant/accused took panch witness as well as the police party to his house at Ulhas Nagar and took out a suitcase which contained forty-four currency notes each of Rs.500/- denomination, which came to be seized by police under Panchnama Exhibit 35. Cross-examination of this witness shows that he was unable to recollect serial numbers of currency notes but he has categorically stated in cross-examination that he himself had counted the currency notes. Cross-examination of this panch witness reveals that he was inside the room when the appellant/accused took out the suitcase and produced the currency notes from that suitcase. It was suggested to him that no special identification marks were made on the currency notes. It was not expected of the Investigating Officer to write something on the currency notes unless and until those currency notes were declared to be counterfeit currency notes. PW5 Nilesh Desale has stated in his cross-examination that Recovery Panchnama Exhibit 35 was prepared at the house of the appellant/accused after he himself had counted those currency notes. Thus, evidence of PW5 Nilesh Desale proves seizure of forty currency notes upon being produced by PW1 Mohan Lakhawade, Branch Manager of the Abhinav Co-operative Bank, and thereafter, seizure of forty-four currency notes at the instance of the appellant/accused.

12 Evidence of PW7 Mallikarjun Kumbhar, Assistant Police Inspector of Vithalwadi Police Station shows that he had sent seized currency notes in two packets for examination to the Government Currency Note Press at Nashik with Request Letter Exhibit 38 through PW6 Sadashiv Nathe, Police Head Constable. Evidence of this carrier Police Head Constable shows that he received two sealed packets and had carried both those sealed

packets to the Government Currency Note Press of Nashik on 26th August 2008. Upon depositing those sealed packets, he obtained receipt on the office copy of the Request Letter from the Government Currency Note Press of Nashik. The document at Exhibit 38 shows that the Government Currency Note Press of Nashik had received the packets containing seized currency notes for examination. PW10 Hemant Kamlaskar, Senior Supervisor with the Government Currency Note Press at Nashik has deposed about examination of seized currency notes by him along with his colleague A.M.Behere. As per version of this witness, upon examination of the currency notes sent by Vithalwadi Police Station, he found that intaglio printing was absent in those currency notes. Optical variable ink was also found missing. The printing as well as seal was lacking sharpness. Fine details on Ashoka Pillars were also found missing. Upon detail examination of seized currency notes, this witness found those currency notes to be thicker than genuine currency notes. Hence, he gave his opinion Exhibit 48 certifying the fact that seized eighty-four currency notes each of Rs.500/- denomination were counterfeit currency notes. There is nothing in cross-examination of this expert witness to disbelieve his version.

13 With this evidence, the prosecution has proved the fact that the appellant/accused was possessing counterfeit currency notes, eighty-four in number, each of Rs.500/- denomination, out of which he attempted to deposit forty currency notes in his account maintained at Dombivli branch of the Abhinav Co-operative Bank, on 11th August 2008. The appellant/accused has not explained in his statement under Section 313 of the Code of Criminal Procedure as to how he came in possession of counterfeit currency notes in such huge number. He has not disclosed that his possession over the counterfeit currency notes was innocent and he was not aware of the fact that those currency notes were counterfeit. Possessing currency notes of high value in huge number, which were ultimately found to be counterfeit, establishes mensrea and the fact that the appellant/accused attempted to deposit forty of such currency notes in the bank shows that he was knowing as well as having reason to believe

that those currency notes were counterfeit. His possession of counterfeit currency notes in huge number demonstrates his knowledge in the light of the fact that he never attempted to explain about the same in his statement under Section 313 of the Code of Criminal Procedure.

14 In the light of the foregoing discussion, the appeal is devoid of merits, and therefore, the order :

ORDER

The appeal is dismissed.

(A. M. BADAR, J.)