IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.539 OF 2012

HUSSAIN SHABBIR MAHIUDDIN GANGAWALI)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Ms.Nasreen Ayubi, Advocate for the Appellant.

Mr.V.V.Gangurde, APP for the Respondent – State.

CORAM : A. M. BADAR, J.

DATE : RESERVED ON 3rd SEPTEMBER 2019
PRONOUNCED ON 16th DECEMBER 2019

JUDGMENT :

1 By this appeal, the appellant/accused is challenging the judgment and order dated 22nd November 2011 passed by the learned Additional Sessions Judge, Pune, thereby convicting him of offences punishable under the Section 489C of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for 5

years apart from imposition of fine of Rs.5,000/- and in default thereof, directing him to under go further rigorous imprisonment for 6 months.

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

(a) According to the prosecution case, on 30th December 2008, PW6 Rajendra Thorve, Police Sub-Inspector, Anti-Terrorist Squad, Pune, had received a secret information from the informant that at about 7.00 p.m. of that day, one person by name Hussain is coming to Arun Kadam Square, Janwadi, Pune, for selling counterfeit currency notes. He apprised Police Sub-Inspector Lobo of the Anti-Terrorist Squad about such information. Accordingly, entry came to be taken in the Station Diary. It was decided to lay a trap to apprehend the accused and accordingly, police team went to Arun Kadam Square, Janwadi, Pune, in a private vehicle along with the secret informant. At about 7.05 p.m. of 30th

December 2008, the appellant/accused came at the said Square and stopped in front of Pace Computers. He was waiting for somebody.

(b) According to the prosecution case, the secret informant then gave signal to the police team. In pursuant to that signal, members of the police team apprehended the appellant/accused. PW7 Atul Sabnis, Police Inspector, then directed the Police constable to call for two panch witnesses. Accordingly, panch witnesses including PW2 Sagar Pacharne came on the spot. The appellant/accused was asked about his name and he disclosed his name as Hussain Shabbir Mahiuddin Gangawali, resident of Makdum Colony, Taluka Bhatkal, District Karwar, Karnataka. Personal search of the appellant/accused then came to be taken in front of panch witnesses. In all 250 counterfeit currency notes of Rs.100/- denomination each were found in pockets of his kurta as well as jeans pant, apart from one diary. Those counterfeit currency notes were bearing same number. Accordingly, Seizure Panchnama came to be prepared on the spot itself and counterfeit currency notes as well as diary came to be seized. The appellant/accused came to be arrested on the basis of First Information Report (FIR) Exhibit 40 lodged by PW6 Rajendra Thorve, Police Sub-Inspector. That is how Crime No.22 of 2008 for offences punishable under Sections 489A, 489B and 489C read with 34 of the Indian Penal Code came to be registered against the appellant/accused and other unknown accused.

(c) During the course of investigation, seized counterfeit currency notes were sent to the Government Currency Notes Press at Nashik for opinion of the expert. Accordingly, those currency notes came to be examined by PW4 Vijay Zadbuke, Assistant Works Manager of the Government Currency Notes Press, Nashik. Report Exhibit 30 came to be submitted to the Investigating Officer.

(d) After completion of routine investigation, the appellant/ accused came to be charge-sheeted of offences punishable under Sections 489A, 489B and 489C read with 34 of the Indian Penal Code, as it was transpired during investigation that the appellant/accused along with absconding accused Riaz Bhatkal and others had fabricated fake currency notes for bringing those currency notes into circulation and accordingly, same were brought to Pune for the purpose of selling.

(e) After hearing the parties, the learned trial court framed the Charge for offences punishable under Sections 489A and 489C read with 34 of the Indian Penal Code. Parties went for trial. In support of the Charge, the prosecution has examined in all seven witnesses. Nikhil Gaikwad, panch witness to the Arrest Panchnama is examined as PW1. Sagar Pacharne, panch witness to the personal search of the appellant/accused came to be examined as PW2. Exhibit 19 is the Search cum Seizure Panchnama. Ravindra Pawar, driver of the auto rickshaw, who heard the conversation of the appellant/accused and witnessed the search, came to be examined as PW3. Vijay Zadbuke, Assistant Works Manager with the Government Currency Notes Press, Nashik, is examined as PW4 and his report is at Exhibit 30. Police Head Constable Prabhakar Therkude, who carried the muddemal, is examined as PW5. First Informant Rajendra Thorve, Police Sub-Inspector is examined as PW6 and the FIR is at Exhibit 40. Atul Sabnis, Investigating Officer, who laid the trap and arrested the appellant/accused came to be examined as PW7.

(f) Defence of the appellant/accused is that of total denial. According to the appellant/accused, he came to be arrested much earlier to 30th December 2008 and news of his arrest came to be published in several newspapers. In support of his defence, the appellant/accused has examined in all six witnesses. He examined his brother-in-law Naseer Shaikh as DW1. Mutavali of Janwadi Masjid Rashid Osman Shaikh came to be examined as DW2. Library Assistant Anil Godse is examined as DW3. Reporters of daily newspapers Sanjay

Kadu, Archana More and Asseem Shaikh came to be examined as DW4 to DW6.

(g) After hearing the parties, the learned trial court came to the conclusion that the appellant/accused possessed 250 counterfeit currency notes of Rs.100/- denomination each and he had reason to believe that those currency notes were fake. The learned trial court held that the appellant/ accused is guilty of the offence punishable under Section 489C of the Indian Penal Code and accordingly convicted and sentenced him, as indicated in the opening paragraph of this judgment.

3 I have heard Ms.Ayubi, the learned counsel appearing for the appellant/accused, at sufficient length of time. She drew my attention to evidence of defence witnesses and particularly to that of DW6 Asseem Mohd. Ali Shaikh, reporter working with Times of India and contended that evidence of defence witnesses do indicate that the appellant/accused was not arrested on 30th December 2008 by the police. The defence evidence indicates that

the appellant/accused came to be arrested by police much prior to 30th December 2008 and a stage managed show that he was arrested along with fake currency notes on 30th December 2008 came to be arranged by the police subsequently. The learned counsel further drew my attention to the newspaper reports including the issue of the newspaper at Exhibit 81. With this, the defence argued that the appellant/accused is entitled for benefit of doubt.

4 As against this, the learned APP supported the impugned judgment and order of conviction as well as the resultant sentence by contending that the prosecution has duly proved the offence.

5 I have considered the submissions so advanced and perused the record and proceedings including the oral as well as documentary evidence adduced by the parties.

6 Material witnesses examined by the prosecution in order to establish the fact that the appellant/accused was found in

possession of 250 counterfeit currency notes, each of Rs.100/- denomination, knowing or having reason to believe the same to be counterfeit are PW6 Rajendra Thorve and PW7 Atul Sabnis, Investigating Officer. Evidence of both these witnesses unerringly points out that on 30th December 2008, PW6 Rajendra Thorve, Police Sub-Inspector, Anti-Terrorist Squad, Pune had received secret information to the effect that a person named Hussain was coming to Arun Kadam Square for selling counterfeit currency notes. Congruous evidence of both these witnesses goes to show that note of this fact came to be taken in the Station Diary and a team of Police Officers came to be formed for nabbing the offender. As stated by both these witnesses, at about 7.05 p.m. of 30th December 2008, members of the police team found that one person came in suspicious condition and stopped in front of Pace Computers shop. Then the secret informer gave a signal to the police team and that is how the appellant/accused came to be nabbed.

7 Evidence of PW6 Rajendra Thorve, Police Sub-Inspector, as well as PW7 Atul Sabnis, Police Inspector, further shows that as per directions, Police Naik Barbhuje summoned two panch witnesses and in presence of PW2 Sagar Pacharne, panch witness, person of the appellant/accused came to be searched. Evidence of these two witnesses so also that of panch witness PW2 Sagar Pacharne shows that in personal search of the appellant/accused, three bundles of counterfeit currency notes came to be recovered from both pockets of his kurta as well as pocket of his jeans pant. Those counterfeit currency notes were found to be 250 in number and were of Rs.100/- denomination. Vide Panchnama Exhibit 19, those counterfeit currency notes which were bearing serial number 8 FA 508156 came to be seized. Evidence of police witnesses namely PW6 Rajendra Thorve and PW7 Atul Sabnis, as such, gains corroboration in material particulars from evidence of PW2 Sagar Pacharne, panch witness. Their evidence is corroborated by PW3 Ravindra Pawar, auto rickshaw driver, who has deposed that he had found the

appellant/accused present on the same place three or four days prior to the incident, and at that time, the appellant/accused was telling his friends that he wants to sell fake currency notes. PW3 Ravindra Pawar had disclosed that he had seen the appellant/accused being searched by the police.

8 With this evidence, which has passed the test of truthfulness in the cross-examination, the prosecution has established the fact that 250 currency notes, each of Rs.100/- denomination, bearing same serial number viz. 8 FA 508156, came to be seized from the appellant/accused on 30th December 2008. PW5 Prabhakar Therkude, Police Head Constable, has deposed about depositing those currency notes in a sealed cover with the Government Currency Notes Press at Nashik. PW4 Vijay Zadbuke, Assistant Works Manager of the Government Currency Notes Press, Nashik, has vouched about examination of those seized currency notes. As per his version, he compared the seized currency notes with genuine currency notes with the help of various equipment. He found that features of seized currency

notes were not matching with the genuine currency notes. Size, paper, watermark and security thread so also printing ink shades of seized currency notes were not matching with the genuine currency notes. Thickness of the seized currency notes, promissory clause, printing colour etc. of the seized currency notes were not matching with the genuine currency notes. With this, the witness stated before the court that he concluded that seized currency notes were counterfeit currency notes. Report Exhibit 30 issued by this witness is corroborating his version before the court. There is nothing in cross-examination of this expert witness to disbelieve his version.

9 Now let us examine whether evidence adduced by the defence can throw shadow of doubt on case of the prosecution, making the appellant/accused entitled for benefit of doubt. It is defence of the appellant/accused that he was already in custody of police much earlier to 30th December 2008, when the incident is alleged to have happened, by the prosecution. To substantiate this defence, in all six defence witnesses, as stated in foregoing

paragraph, came to be examined by the appellant/accused. Let us examine evidence of those witnesses.

10 In his statement under Section 313 of the Code of Criminal Procedure (herein after referred to as Cr.P.C. for the sake of brevity), the appellant/accused accepted the fact that in December 2008, he came to Pune. He stated that he as well as his brother-in-law used to stay and sleep at Masjid. As per defence version, brother-in-law of the appellant/accused is a resident of Pune. He came to be apprehended from Masjid. He along with his brother-in-law were then taken away and again brought back to Masjid at about 2.00 p.m. Then, as per statement of the appellant/accused under Section 313 of the Cr.P.C., those persons took him with them. This incident of taking him took place three to four days prior to his arrest. In his presence, one fake note came to be prepared and he is involved in this false case. As against this version of the appellant/accused found in his statement under Section 313 of the Cr.P.C., DW1 Naseer Shaikh, who happens to be brother-in-law of the appellant/accused, has

stated that on 29th December 2008, Anti-Terrorist Squad personnel came to his house. Then inquired about the appellant/accused. DW1 Naseer Shaikh further stated that then he took the police personnel to Janwadi Masjid. Thereafter, the Anti-Terrorist Squad personnel took the appellant/accused to Shivaji Nagar Police Line. DW2 Rashid Shaikh, Mutavali of Janwadi Masjid, deposed that on 29th December 2008, he got a call from police and he was inquired as to whether he knew anything about the terrorist caught from the Masjid. The other defence witnesses, who are reporters of the local newspapers and Library Assistant working in the office of the local newspaper have stated about the news item published in several local newspaper regarding apprehending the terrorist. However, evidence of these witnesses does not disclose that the news published in the local newspapers were on the basis of authenticated sources from the police department. Press notes, if any, of the police department, are also not brought on record by the defence. Thus, the defence evidence is not of any assistance to throw doubt on the prosecution case regarding apprehending the appellant/accused on 30th December 2008 along with fake currency notes. As all 250 currency notes were having same serial number and as seen from evidence of the expert, those were different in size than the genuine currency notes, I find no infirmity in the finding of the learned trial court that the appellant/accused was knowing or having reason to believe that the currency notes possessed by him were forged or counterfeit. The fact that the appellant/accused was possessing counterfeit currency notes in huge number indicates that he was intending to use them as genuine.

11 In the result, the appeal fails and therefore the order :

ORDER

The appeal is dismissed.

(A. M. BADAR, J.)