

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 198 OF 2016**

1. Kartik Sunder Mandal, .Appellants  
Aged : 29 years, Occu : waiter,
2. Kishor Lankeshwar Mandal,  
Aged : 39 years, Occu : waiter,  
Both residents of Survey No. 101,  
Ramoshiwadi, Gokhale Nagar,  
S. B. Road, Near Ganesh Temple,  
Shivaji Nagar, Model Colony,  
Pune  
and having permanent address  
at Sonapukur, Post Thana Hadova,  
District North-24,  
Pargana  
Pin Code – 743 502.

( Both accused are in Yerawada Central Prison )

Vs.

The State of Maharashtra .Respondent  
( At the instance of Swargate Police Station, Pune)

Mr. Pawan Mali, Advocate, for the Appellants  
Mr. S. V. Gavand, APP, for the Respondent – State

**CORAM : REVATI MOHITE DERE, J.**

**DATE : 03.04.2019**

**ORAL JUDGMENT**

. By this Appeal, the Appellants have impugned the Judgment and Order dated 23.06.2015 passed by the learned Additional Sessions Judge, Pune in Sessions Case No. 190 of 2014, convicting and sentencing them as under :-

- for the offence punishable under Section 489B r/w 34 of the Indian Penal Code to suffer R. I. for ten years and to pay fine of Rs. 5,000/- each, in default to suffer further R. I. for six months;

- for the offence punishable under Section 489C r/w 34 of the Indian Penal Code to suffer R. I. for five years and to pay fine of Rs. 3,000/- each, in default to suffer further R. I. for three months.

Both the sentences were directed to run concurrently.

2. At the outset, learned counsel for the Appellant submits that he intends to argue the aforesaid Appeal only on the

point of sentence and not on merits. He submits that having regard to the peculiar facts and circumstances of the case and the fact, that the Appellants are in custody for almost six years, the Appellants be released on undergone sentence. He further submits that both the Appellants are poor and the only bread winners of their families. He further submits the Appellants have no antecedents.

3. Learned APP does not dispute the fact, that the Appellants have no antecedents.

4. Although, the Appeal is not being pressed on merits, it would be necessary to set out a few facts;

On 04.12.2013, API, Pramod Kathane ( PW.6 ) and the staff of Crime Detection Branch were present at the Swargate Police Station, Pune, when PW.2 – Jagannath Gore, ( Police Havaladar ) received secret information, that two persons were coming to the Swargate Bus Stand for circulating fake currency notes. The informant also supplied the description of the

said two persons. Pursuant to the said information, PW.6, API Kathane and his team including panchas laid a trap near the Swargate Bus Stand. At about 7.00 p. m., the Appellants were found present in front of the Vada Pav stall of PW.1 – Dilipkumar Agarwal. The informant was also present at the time of raid and showed the Appellants to the said raiding party. The Appellants were found eating Vada Pav. When, one of the Appellant gave a Rs. 500/- currency note to PW.1 – Dilipkumar Agarwal, the police apprehended the Appellants. PW.6 - API Kathane seized the Rs. 500/- note in the presence of panchas and the raiding party. In addition, eight fake notes of Rs. 100/- denomination and nine fake notes of Rs. 500/- denomination were seized from the Appellant No. 1 and six fake notes of Rs. 1,000/- denomination and two fake notes of Rs. 500/- denomination were seized from the Appellant No. 2. The said notes were seized under a panchanama. The Appellants were, thereafter, brought to the police station, where PW.2 – Jagannath Gore lodged a complaint which was registered vide C. R. No. 297 of 2013, as against the Appellants for the offences punishable under Sections 489B and 489C of the Indian Penal Code. The investigation was, thereafter,

handed over to API Kathane, who after conducting the investigation filed charge-sheet as against the Appellants in the Court of the learned JMFC, Pune. Since the offences were Sessions triable, the case was committed to the Court of Sessions for trial. The learned Sessions Judge framed charge as against the Appellants for the aforesaid offences, to which the Appellants pleaded not guilty and claimed to be tried. The defence of the Appellants was of total denial and false implication. According to the Appellants, no such incident as alleged had taken place.

5. The prosecution in support of its case examined six witnesses; PW.1 – Dilipkumar Agarwal, Vada Pav store owner; where the Appellants gave fake currency note of Rs. 500/- to purchase Vada Pav; PW.2 – Jagannath Gore, Police Havaldar ( Complainant ), who received the secret information; PW.3 – Anil Khandare, panch to the spot panchanama. The said witness has deposed with regard to the seizure of the fake currency notes from the person of the Appellants; PW.4 – Shakil Shaikh, Police Havaldar, who delivered the articles to the Government Printing Press, Nasik; PW.5 – Nitin Telange, who was present at the spot at

the time of raid and PW.6 – Pramod Kathane, API, who was the investigating officer in the said case. The evidence of PW.1, PW.2, PW.3, PW.5 & PW.6 is consistent with each other on all material aspects, with respect to the receipt of secret information by PW.2, finding the Appellants at the spot purchasing Vada Pav from PW.1, payment of Rs. 500/- to PW.1 – Vada Pav owner and seizure of the Rs. 500/- note and other notes from the Appellants, preparation of the panchanama at the spot with respect to the seizure of the said notes and thereafter, arrest of the Appellants. Having regard to the evidence on record, the conviction of the Appellants for both the offences punishable under Sections 489B and 489C is maintained. Even the sentence awarded by the trial Court for the offence punishable under Section 489C for five years is maintained.

6. As far as the sentence awarded for the offence punishable under Section 489B is concerned, learned counsel for the Appellants submits that the said sentence be reduced from 10 years to the period already undergone, considering the facts and as the Appellants are poor and the only bread winners of their

families.

7. The Appellants have no antecedents. The Appellants have been in custody since their arrest i. e. 04.12.2013 and as such, have undergone more than six years ( including remission ) for the offence punishable under Section 489B. As far as sentence awarded under Section 489C is concerned, the Appellants have already undergone the entire sentence. Having regard to the peculiar facts and circumstances of the case, the sentences of the Appellants, insofar as, it convicts the Appellants for the offence punishable under Section 489B of the Indian Penal Code for ten years is concerned, the same is reduced to the period already undergone by the Appellants. Insofar, as the sentence imposed under Section 489C of the Indian Penal Code is concerned, the same is maintained. Accordingly, the Appellants be released forthwith, if not required in any other case. The Appeal is partly allowed on the aforesaid terms and is disposed of.

All concerned to act on the authenticated copy of this order.

**(REVATI MOHITE DERE, J.)**