IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.799 OF 2015

ABDUL KUDDUS MUSTAQ SHAIKH)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

WITH

CRIMINAL APPEAL NO.983 OF 2017

ASADUL NOORHASAN SHAIKH)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.D.G.Khamkar, Advocate for the Appellants.

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

CORAM : A. M. BADAR, J.

DATE : 8th JANUARY 2019

JUDGMENT :

1 Criminal Appeal bearing No.799 of 2015 is filed by appellant/accused no.2 Abdul Kuddus Shaikh whereas Criminal Appeal No.983 of 2017 is filed by appellant/accused no.3 Asadul Shaikh. By these appeals, they are challenging the judgment and order dated 19th March 2015 passed by the learned Additional Sessions Judge, Pune, in Sessions Case No.434 of 2011, thereby convicting them and accused no.1 Mohammad Bilal Shaikh of offences punishable under Section 489B read with 120B, Section 489C read with 120B, Section 420 read with 120B and under Section 120B of the Indian Penal Code. For the offence punishable under Section 489B read with 120B of the Indian Penal Code, they are sentenced to suffer rigorous imprisonment for 10 years apart from direction to pay fine of Rs.5,000/- and in default to undergo further rigorous imprisonment for 1 year. For the offence punishable under Section 489C read with 120B of the Indian Penal Code, the appellants/accused so also the co-accused are directed to suffer rigorous imprisonment for 7 years apart from payment of fine of Rs.2,000/- and in default, to undergo

further rigorous imprisonment for 6 months. They are sentenced to suffer rigorous imprisonment for 7 years apart from direction to pay fine of Rs.2,000/- and in default to undergo further rigorous imprisonment for 6 months, for the offence punishable under Section 420B read with 120B of the Indian Penal Code. For the offence punishable under Section 120B of the Indian Penal Code, the appellants/accused and the co-accused are sentenced to suffer rigorous imprisonment for 1 year and to pay fine of Rs.1,000/-, in default, to suffer rigorous imprisonment for 3 months. The substantive sentences are directed to run concurrently.

2 Facts leading to the prosecution of the appellants/accused as well as the co-accused Mohammad Bilal Shaikh and their resultant conviction can be summarized thus :

(a) Both appellant/accused no.2 Abdul Kuddus Shaikh and appellant/accused no.3 Asadul Shaikh along with co-accused Mohammad Bilal Shaikh were subjected to the trial on the accusation that they had possessed and used counterfeit currency notes knowing and having reason to believe that those were counterfeit and by using those counterfeit currency notes, they had cheated several shopkeepers including PW1 Nilesh Sakure – proprietor of Vighnaharta Medical Store, PW10 Anil Adwani – proprietor of Hare Krishna Dressers, PW11 Vijay Nagpal – proprietor of Shyam Sundar Super Shoppy and others on the pretext of purchasing sundry articles. It is also alleged by the prosecution that the appellants/accused and the co-accused have stayed in India without valid authorization and without possessing valid passport.

(b) Wheels of investigation were set in motion on the basis of report Exhibit 48 lodged by PW1 Nilesh Sakure – proprietor of Vighnaharta Medical Store of Nigdi on 15th October 2010 with Police Station Nigdi, which has resulted in registration of Crime No.285 of 2010 against the accused persons. It is reported by PW1 Nilesh Sakure that on 13th October 2010 accused no.1 Mohammad Bilal Shaikh purchased article named as German oil costing Rs.199/- by tendering a counterfeit currency note of Rs.1,000/- denomination. Soon thereafter, accused no.1 Mohammad Bilal Shaikh accompanied by appellant/accused no.2 Abdul Kuddus Shaikh came to the shop and purchased sundry items like shampoo, soap and toothpaste costing Rs.202/- and made the payment by tendering a counterfeit currency note of Rs.1,000/- denomination. They had obtained refund of the balance amount. At the end of the day, he doubted about genuineness of both those counterfeit currency notes of Rs.1,000/- denomination, and therefore, on 14th October 2010, he got those counterfeit currency notes checked and verified on machine of Rupee Bank through PW3 Bipin Phule – Cashier working in that bank. It was found that both those currency notes of Rs.1,000/- denomination were forged and counterfeit. On 15th October 2010, accused no.1 Mohammad Bilal Shaikh again came for purchasing German oil by giving counterfeit currency note of Rs.1,000/- denomination. He was detained by PW1 Nilesh Sakure and PW4 Sanjay Govindwani – a neighbouring shop owner was called. PW4 Sanjay Govindwani then summoned police. Accordingly, PW8 Prakash Jadhav, Assistant Police Inspector of Police Station Nigdi came and apprehended accused no.1 Mohammad Bilal Shaikh. He recorded the First Information Report (FIR) Exhibit 48 lodged by PW1 Nilesh Sakure, seized three counterfeit currency notes of Rs.1,000/- denomination each, on production by PW1 Nilesh Sakure vide Seizure Panchnama Exhibit 54, in presence of panch witnesses PW2 Ganesh Ghanekar and PW9 Uttamrao Kenjale. Personal search of accused no.1 Mohammad Bilal Shaikh yielded in recovery of 9 counterfeit currency notes of Rs.1,000/- denomination each and those were seized vide Seizure Panchnama Exhibit 53 in presence of PW2 Ganesh Ghanekar and PW9 Uttamrao Kenjale.

(c) On 15th October 2010 itself, accused no.1 Mohammad Bilal Shaikh made voluntary disclosure statement Exhibit 55 in presence of panchas PW2 Ganesh Ghanekar and PW9 Uttamrao Kenjale. It was recorded by PW8 Prakash Jadhav, Assistant Police Inspector. That disclosure statement ultimately resulted in recovery of 35 fake and counterfeit currency notes of Rs.1,000/- denomination each, sundry, grocery and household items in huge quantity, genuine currency notes worth Rs.1,35,010/- and four receipts viz. two receipts of Vighnaharta Medical Store and one receipt of Shyam Sundar Super Shoppy and one receipt of Hare Krishna Dressers. Those articles came to be seized vide Recovery Panchnama Exhibit 72 before the panch witnesses.

(d) Appellant/accused no.2 Abdul Kuddus was found in the place disclosed by accused no.1 Mohammad Bilal from where counterfeit currency notes in huge number apart from other articles came to be seized. Personal search of appellant/accused no.2 Abdul Kuddus was, therefore, taken in presence of PW2 Ganesh Ghanekar and PW9 Uttamrao Kenjale on 15th October 2010 itself. Ten counterfeit currency notes each of Rs.1,000/- denomination apart from Pan card, railway pass etc. came to be recovered from his person and those articles were seized vide Panchnama Exhibit 56 on 15th October 2010 itself.

(e) On 21st October 2010, appellant/accused no.3 Asadul Shaikh made a voluntary disclosure statement Exhibit 84 and on the basis of that statement one counterfeit currency note of Rs.1,000/- denomination came to be recovered from PW11 Vijay Nagpal vide Recovery Panchnama Exhibit 85. On the basis of voluntary disclosure statement of accused no.1 Mohammad Bilal Shaikh one counterfeit currency note of Rs.1,000/- denomination came to be seized from PW10 Anil Adwani – proprietor of Hare Krishna Dressers.

(f) Co-accused Dilawar was found to be juvenile in conflict with law and as such, he was dealt with separately.

(g) Seized counterfeit currency notes were sent for forensic examination to the Government Currency Press Note at Nashik. After examining them, PW7 Mukund Shukla, Assistant Works Manager, submitted report Exhibit 67 to the effect that those currency notes are counterfeit currency notes.

(h) On completion of investigation, the appellants/accused persons, so also co-accused Mohammad Bilal Shaikh came to be charge-sheeted. The learned trial court framed and explained the Charge to the appellants/accused as well as accused no.1 Mohammad Bilal Shaikh. They all pleaded not guilty and claimed trial.

(i) In order to bring home the guilt to the accused persons, the prosecution has examined in all twelve witnesses. The defence of the appellants/accused was that of total denial. However, they did not enter in the defence.

(j) After hearing the parties, the learned trial court by the impugned judgment and order of conviction and resultant sentence came to the conclusion that appellants/accused nos.2 and 3 along with co-accused conspired and trafficked in and used as genuine the counterfeit currency notes by possessing them and cheated PW1 Nilesh Sakure, PW10 Anil Adwani and PW11 Vijay Nagpal as well as others by dishonestly inducing them to deliver sundry articles by receiving counterfeit currency notes. The learned trial court came to the conclusion that the accused persons entered in unlawful agreement for possessing as well as trafficking in fake currency notes for cheating the shopkeepers. Accordingly, the appellants/accused as well as accused no.1 Mohammad Bilal Shaikh came to be convicted and sentenced as indicated in the opening paragraph of this judgment.

3 I have heard Shri Khamkar, the learned counsel appearing for the appellants/accused nos.2 and 3 at sufficient length of time. By taking me through the entire evidence adduced by the prosecution, the learned counsel argued that there is absolutely no evidence to show that appellant/accused no.2 Abdul Kuddus had circulated fake currency notes. PW5 Umesh Dhangar, who was working as employee with PW1 Nilesh Sakure has not

identified appellant/accused no.2 Abdul Kuddus. No Test Identification Parade was held. Evidence of PW1 Nilesh Sakure regarding identity of appellant/accused no.2 Abdul Kuddus is highly doubtful. He has deposed that the first customer who came to his shop was appellant/accused no.2 Abdul Kuddus, whereas other evidence on record shows that it was accused no.1 Mohammad Bilal Shaikh. The learned counsel further argued that PW4 Sanjay Govindwani has not spoken about involvement of appellant/accused no.2 Abdul Kuddus in the crime in question. It is further argued that even if case of the prosecution is accepted, then also allegation against appellant/accused no.3 Asadul Shaikh is in respect of possession of one counterfeit currency note of Rs.1,000/- denomination. There is no other evidence against appellant/accused no.3 Asadul Shaikh. With this, it is argued that the appellants/accused are entitled for acquittal for want of sufficient evidence.

4 The learned APP supported the impugned judgment and order of conviction and resultant sentence. By drawing my

attention to the letter Exhibit 61 sent to the Government Currency Note Press by the Investigating Officer, he argued that serial number of the fake currency notes seized from all accused persons are closely connected and are of same series. This reflected conspiracy.

5 I have carefully considered the rival submissions and also perused the record and proceedings including deposition of prosecution witnesses as well as documentary evidence adduced by the prosecution.

6 The prosecution in its evidence has established the fact that in all 61 currency notes, each of Rs.1,000/- denomination, came to be seized vide several panchnamas. PW6 Mahendra Waikar is a constable who carried seized currency notes along with covering letter Exhibit 64 to the Government Currency Note Press, Nashik, for forensic examination. His evidence shows that he tendered seven sealed packets along with forwarding letter at Exhibit 64 to the Government Currency Note Press, Nashik. He

was cross-examined to demonstrate that he was not knowing who had sealed the envelopes and when those were sealed. This ignorance on the part of the carrier constable is of no consequence. The acknowledgment at Exhibit 65 issued by the Government Currency Note Press shows that it has received sealed envelopes which contained 61 currency notes of Rs.1,000/- denomination. This evidence is sufficient to conclude that seized currency notes were forwarded to the Government Currency Note Press of Nashik for forensic examination.

7 PW7 Mukund Shukla, Assistant Works Manager, working with the Government Currency Note Press, Nashik, had examined seized 61 currency notes each of Rs.1,000/- denomination sent by Police Station Nigdi, and submitted his report Exhibit 67. His evidence shows that all those 61 currency notes were counterfeit currency notes. The report at Exhibit 67 prepared by this expert demonstrate the reasons for coming to the conclusion that seized 61 currency notes were counterfeit currency notes. Ink shades of those currency notes were not

matching with the genuine currency notes and colour registration of those currency notes was not correct. Their numbering was not as per the genuine currency notes. PW7 Mukund Shukla has observed that intaglio printing for the text in the currency notes under examination was absent and R.B.I. seal was lacking sharpness and fine details. The printing ink colours were found to be not matching with the genuine currency notes.

8 It is, thus, seen from evidence of PW7 Mukund Shukla, Assistant Works Manager, that seized currency notes were resembling the genuine currency notes. For making out the offence under Section 489C of the Indian Penal Code, the prosecution is required to prove that the accused must know or had reason to believe that the currency notes are counterfeit and that he intended to use them as genuine or that those may be used as genuine. This fact is not required to be proved by direct evidence. When the accused is found in possession of large quantity of counterfeit currency notes and when he failed to come up with an explanation that he came in possession of such

counterfeit currency notes innocently or that he did not have any intention of using those currency notes, then intention of the accused to use the counterfeit currency notes as genuine can be inferred. Let us, therefore, examine whether the prosecution has proved that the appellants/accused along with co-accused have indulged in conspiracy of possessing and trafficking of the counterfeit currency notes for the purpose of cheating the shopkeepers.

9 Section 120A of the IPC defines the offence of criminal conspiracy and it reads thus :

> **120A. Definition of criminal conspiracy** - When two or more persons agree to do, or cause to be done -
>
> (1) an illegal act, or
>
> (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy :
>
> Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in

> pursuance thereof.
>
> Explanation.—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

Bare perusal of this definition of criminal conspiracy makes it clear that if circumstances in a case when taken together on their face value are indicating meeting of minds between the conspirators for the intended object of committing an illegal act or an act which is not illegal committed by illegal means, then, the offence of criminal conspiracy punishable under Section 120B of the IPC is made out. It is necessary to quote observations of the Hon'ble Apex Court in the matter of **Keharsingh vs. State (Delhi Administration)** reported in **AIR 1978 SC 1883**. Ingredients of the offence of criminal conspiracy are explained by the Apex Court in the following manner in paragraphs 271 and 272 which read thus :

> "271. It will be thus seen that the most important ingredient of the offence of conspiracy is the agreement between two or more persons to do an illegal act. The illegal act may or may not be done in pursuance of agreement, but the very agreement is an offence and is punishable. Reference to Ss. 120-A and 120-B, IPC

> would make these aspects clear beyond doubt. Entering into an agreement by two or more persons to do illegal act or legal act by illegal means is the very quintessence of the offence of conspiracy.
>
> "272. Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence direct or circumstantial. But the Court must enquire whether the two persons are independently pursuing the same end or they have come together to the pursuit of the unlawful object. The former does not render them conspirators, but the latter does. It is, however, essential that the offence of conspiracy required some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of two persons is necessary. Nor it is necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient.

10 What constitutes an offence of criminal conspiracy is further explained by the Hon'ble Apex Court in the matter of **State of Tamil Nadu Vs. Nalini** reported in **1999 Cri. L.J. 124** and the

relevant observations read thus :-

> "The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances, especially declarations, acts and conduct of conspirators. The agreement need not be entered into by all the parties to it at the same time, but may be reached by successive action evidencing their joining of conspiracy. It has been said that a criminal conspiracy is a partnership in crime and there is in each conspiracy a joint or mutual agency for the prosecution of a common plan. Thus, if two or more persons enter into a conspiracy any act done by any of them pursuant to the agreement is in contemplation of law, the act of each of them and they are jointly responsible therefor. This means that everything said, written or done by any of the conspirators in execution of furtherance of the common purpose is deemed to have been said, done or written by each of them. And this joint responsibility extends not only to what is done by any of the conspirators pursuant to the original agreement but also to collateral acts incidental to and growing out of the original purpose."

11 Let us now examine evidence adduced by the prosecution in support of the Charge of possessing and trafficking in fake currency notes under conspiracy by the appellants/accused and the co-accused. Evidence of PW1 Nilesh Sakure is crystal clear to prove the fact that on 13th October 2010 accused no.1 Mohammad Bilal Shaikh initially visited his shop, name and styled as Vighnaharta Medical Store, Nigdi, and purchased German oil costing Rs.199/- by tendering one counterfeit currency note of Rs.1,000/- denomination. Subsequently, accused no.1 Mohammad Bilal Shaikh again came to his shop on 13th October 2010 itself with appellant/accused no.2 Abdul Kuddus Shaikh and they purchased shampoo, soap and toothpaste costing Rs.202/-, and at that time appellant/accused no.2 Abdul Kuddus Shaikh had tendered one counterfeit currency note of Rs.1,000/- denomination. As spoken by PW1 Nilesh Sakure, both accused persons had obtained refund. At the end of the day, PW1 Nilesh Sakure doubted about genuineness of those two counterfeit currency notes of Rs.1,000/- denomination, and therefore, on 14th

October 2010, he got those currency notes examined through PW3 Bipin Phule – Cashier with the Rupee Bank. Congruous evidence of both these witnesses goes to show that after verifying the currency notes on the machine of the bank, those were found to be counterfeit currency notes.

12 PW1 Nilesh Sakure further deposed that on 15th October 2010, accused no.1 Mohammad Bilal Shaikh again came to his shop for purchase of German oil and tendered one currency note of Rs.1,000/- denomination. PW1 Nilesh Sakure detained him and called PW4 Sanjay Govindwani – a neighbouring shop owner. This has happened in presence of PW5 Umesh Dhangar – an employee of PW1 Nilesh Sakure. After detaining accused no.1 Mohammad Bilal Shaikh, PW4 Sanjay Govindwani called police. What happened subsequently has come on record through evidence of these witnesses as well as evidence of PW8 Prakash Jadhav, Assistant Police Inspector, working with Nigdi Police Station. While in the dock, PW1 Nilesh Sakure has duly identified appellant/accused no.2 Abdul Kuddus Shaikh as a person who

came to his shop and who tendered fake counterfeit currency note of Rs.1,000/- denomination on 13th October 2010. Similarly, he has identified accused no.1 Mohammad Bilal Shaikh. PW4 Sanjay Govindwani had no occasion to identify appellant/accused no.2 Abdul Kuddus Shaikh, as on 15th October 2010 only accused no.1 Mohammad Bilal Shaikh re-visited Vighnaharta Medical Store of PW1 Nilesh Sakure. PW5 Umesh Dhangar failed to identify appellant/accused no.2 Abdul Kuddus while in the witness box. However, this failure is of no consequence, for the reasons which would be stated in the subsequent paragraphs of this judgment. Congruous evidence of PW8 Prakash Jadhav, Assistant Police Inspector, PW1 Nilesh Sakure and panch witnesses – PW2 Ganesh Ghanekar and PW9 Uttamrao Kenjale show that vide Seizure Panchnama Exhibit 54, three counterfeit currency notes each of Rs.1,000/- denomination came to be seized on 15th October 2010, upon being produced by PW1 Nilesh Sakure after registration of the FIR by him. Then, upon personal search of accused no.1 Mohammad Bilal Shaikh, conducted in presence of panch witnesses PW2 Ganesh Ghanekar and PW9 Uttamrao Kenjale, nine counterfeit currency notes each of Rs.1,000/- denomination came to be seized vide Seizure Panchnama Exhibit 53.

13 As deposed by PW8 Prakash Jadhav, Assistant Police Inspector, and corroborated by panch witnesses PW2 Ganesh Ghanekar and PW9 Uttamrao Kenjale as well as PW1 Nilesh Sakure, voluntary disclosure statement was made by accused no.1 Mohammad Bilal Shaikh on 15th October 2010 itself which is at Exhibit 55. Accused no.1 Mohammad Bilal Shaikh then led the police party, panch witnesses PW2 Ganesh Ghanekar and PW9 Uttamrao Kenjale as well as PW1 Nilesh Sakure to the tenanted premises at Bhate Vasti in Talawade area of Pune. He knocked the door of room and appellant/accused no.2 Abdul Kuddus Shaikh opened it. All these witnesses in unison have stated about recovery of incriminating articles at the instance of accused no.1 Mohammad Bilal Shaikh from that room. Evidence of PW8 Prakash Jadhav, Assistant Police Inspector, supported by that of PW2 Ganesh Ghanekar and PW9 Uttamrao Kenjale shows that accused no.1 Mohammad Bilal Shaikh discovered a black coloured

bag and a green coloured bag kept in that room. From those bags, 35 counterfeit currency notes each of Rs.1,000/- denomination, genuine currency notes amounting to Rs.1,35,010/-, sundry items of household used 98 in number and four receipts came to be seized vide Seizure Panchnama Exhibit 72. Out of four receipts recovered at the instance of accused no.1 Mohammad Bilal Shaikh, two receipts were of Vighnaharta Medical Store. This recovery is certainly corroborating version of PW1 Nilesh Sakure regarding purchase of sundry articles from his shop by accused no.1 Mohammad Bilal Shaikh and co-accused appellant/accused no.2 Abdul Kuddus Shaikh on 13th October 2010.

14 PW8 Prakash Jadhav, Assistant Police Inspector, has testified that as appellant/accused no.2 Abdul Kuddus was present in the house in which used counterfeit currency notes were found, personal search of appellant/accused no.2 Abdul Kuddus was taken in presence of PW2 Ganesh Ghanekar and PW9 Uttamrao Kenjale on 15th October 2010 itself. He was found to be possessing ten counterfeit currency notes, each of Rs.1,000/-

denomination, which came to be seized vide panchnama of personal search cum seizure Exhibit 56 drawn on 15th October 2010.

15 It is seen from evidence of PW8 Prakash Jadhav, Assistant Police Inspector, that appellant/accused no.3 Asadul Shaikh and Dilawar Hussein Lobo Hussein (juvenile in conflict with law) came to be arrested by Police Inspector Kunte on 16th October 2010 on the say of accused no.1 Mohammad Bilal Shaikh and appellant/accused no.2 Abdul Kuddus Shaikh. One counterfeit currency note of Rs.1,000/- denomination came to be seized from appellant/accused no.3 Asadul Shaikh on 16th October 2010. Similarly, one railway ticket for five passengers for travel from Howrah to Pune was also seized from appellant/accused no.3 Asadul Shaikh. From the juvenile in conflict with law namely Dilawar Hussein one fake currency note of Rs.1,000/- denomination came to be seized.

16 After arresting appellant/accused no.3 Asadul Shaikh on 16th October 2010, he made voluntary disclosure statement on 21st October 2010 in presence of panch witness PW12 Pranit Kamble. This disclosure was made before PW8 Prakash Jadhav, Assistant Police Inspector, who recorded the same. The confessional statement at Exhibit 84 made by appellant/accused no.3 Asadul Shaikh is to the effect that he will show the shop from where he had purchased the articles. Evidence of PW8 Prakash Jadhav, Assistant Police Inspector, and PW12 Pranit Kamble shows that thereafter appellant/accused no.3 Asadul Shaikh had led them to a shop, name and styled as Shyam Sundar Super Shoppy at Pimpri area of Pune. PW11 Vijay Nagpal is owner of that Shyam Sundar Super Shoppy. What happened thereafter can be seen from evidence of this witness PW11 Vijay Nagpal.

17 PW11 Vijay Nagpal has deposed that on 14th October 2010 appellant/accused no.3 Asadul Shaikh came to his shop and purchased soap and hair oil costing Rs.120/-. He gave counterfeit currency note of Rs.1,000/- denomination and obtained refund of

Rs.880/- from PW11 Vijay Nagpal. As per version of this witness, before closing the shop on 14th October 2010, while counting the currency notes, he suspected the said currency note as fake. PW11 Vijay Nagpal deposed about reading article in the newspaper regarding arrest of a person using a fake currency note by Police Station Nigdi. He further deposed that thereafter, on 21st October 2010, police visited his shop along with appellant/accused no.3 Asadul Shaikh. PW11 Vijay Nagpal identified appellant/accused no.3 Asadul Shaikh while in the dock. He produced one counterfeit currency note of Rs.1,000/- tendered to him by appellant/accused no.3 Asadul Shaikh and as per version of PW8 Prakash Jadhav - Assistant Police Inspector, and PW12 Pranit Kamble - panch witness, the same came to be seized vide Recovery Panchnama Exhibit 85. Even PW12 Pranit Kamble has stated that on 21st October 2010 when the police team along with him and appellant/accused no.3 Asadul Shaikh visited Shyam Sundar Super Shoppy owned by PW11 Vijay Nagpal, appellant/accused no.3 Asadul Shaikh was identified by PW11 Vijay Nagpal. On this factual drop back, statement in crossexamination of PW11 Vijay Nagpal that till bringing appellant/accused no.3 Asadul Shaikh before him, he was not knowing which customer had tendered the fake currency note of Rs.1,000/- denomination, cannot be used to mean that the accused was not identified by this witness. Ultimately, PW11 Vijay Nagpal was not knowing appellant/accused no.3 Asadul Shaikh and as such, it was not possible for him to know without showing the customer, as to who had tendered that currency note. Suffice to state that identification of appellant/accused no.3 Asadul Shaikh by PW11 Vijay Nagpal as the person, who by posing as customer had tendered fake currency note of Rs.1,000/- denomination to him, cannot be doubted.

18 Thus, evidence on record unerringly points out that appellants/accused had not only possessed counterfeit currency notes but had also used those currency notes as genuine for purchase of sundry items at paltry sum and for obtaining huge amount as refund in genuine currency notes from the shopkeepers. The appellants/accused as well as the co-accused

were knowing each other. Infact, recovery of a railway ticket for five persons in respect of journey from Howrah to Pune by Azad Hind Express makes it clear that accused persons had traveled together from Howrah to Pune and at Pune they started using counterfeit currency notes as genuine for cheating the shopkeepers. Recovery of 98 items of household used at the instance of accused no.1 Mohammad Bilal Shaikh apart from four receipts issued by different shopkeepers, point out meeting of minds between all accused persons for the purpose of possessing as well as using as genuine the counterfeit currency notes for cheating the shopkeepers. One of the cash receipt of Shyam Sundar Super Shoppy of PW11 Vijay Nagpal recovered at the instance of accused no.1 Mohammad Bilal Shaikh coupled with evidence of PW11 Vijay Nagpal shows that purchase of the articles thereunder was effected by appellant/accused no.3 Asadul Shaikh. Apart from this, if serial numbers of counterfeit currency notes seized from appellants/accused persons and the co-accused are perused, then it is seen that most of the fake currency notes are of the same series with successive numbers. This evidence indicates meeting of minds of the appellants/accused persons and the co-accused for doing an illegal act of possessing and using as genuine, forged and counterfeit currency notes.

19 The net result of foregoing discussion requires me to hold that prosecution has established offences which are held to be proved against the appellants/accused persons by the learned trial court. The sentence imposed on the appellants/accused persons for the proved offences is commensurate with the offences held to be proved against them. Therefore, no interference is required in the impugned order.

20 In the result, the following order :

ORDER

Criminal Appeal Nos.799 of 2015 and 983 of 2017 are dismissed.

(A. M. BADAR, J.)