

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1174 OF 2015

Mohd. Mustafa Mohd. Manjur Shaikh,
Age – 43 Yrs., Occu. - Scrap Vendor,

Present Address :
Opp. Karbala Masjid, P.M.G. Colony,
Ghatkopar,-Mankhurd Link Road,
Mankhurd, Mumbai.

Permanent Address :
Village Betah Parsa,
Thana – Harlakhi Chowk via Khirhar,
Dist- Madhubani, Bihar.

... **Appellant**

V/s.
State of Maharashtra,
(At the instance of Sr. P.I.,
Tilak Nagar Police Station,
Vide C.R.No.294 of 2013.

... **Respondent**

.....

Ms.Megha Bajoria, Advocate for the Appellant.

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

....

CORAM : A.M.BADAR J.

DATED : 29st JANUARY 2019.

ORAL JUDGMENT :

1 The appellant/accused, by this Appeal, is challenging

the impugned Judgment and Order dated 21/12/2015 passed by the learned Additional Sessions Judge, City Civil & Sessions Court, Mumbai in Sessions Case No.1132 of 2013 thereby convicting the appellant/accused of the offences punishable under Sections 489-B and 489-C of the Indian Penal Code. For the offence punishable under Section 489-B of the Indian Penal Code, the appellant/accused is sentenced to suffer rigorous imprisonment for ten years apart from imposition of fine of Rs.2,000/- and in default to further undergo rigorous imprisonment for four months. For the offence punishable under Section 489-C of the Indian Penal Code, the appellant/accused is sentenced to suffer rigorous imprisonment for five years apart from imposition of fine of Rs.2,000/- and in default to further undergo rigorous imprisonment for four months. The learned trial Court further directed that the substantive sentences shall run separately.

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

- (a) First Informant P.W.No.1 Sharad Gupta as well as his cousin P.W.No.3 Sushil Gupta were having a vegetable shop near Tansa Pipeline in Bhimnagar area of Mumbai. P.W.No.1 Sharad Gupta used to look after business of selling vegetables from that shop. The incident in question allegedly took place on 13/09/2013 in presence of First Informant P.W.No.1 Sharad Gupta, P.W.No.2 Sevalal Ramsaroj and P.W.No.3

Sushil Gupta. After recess for lunch, the shop came to be opened by P.W.No.1 Sharad Gupta. At about 6.45 p.m. of that day, the appellant/accused came to the shop and purchased potatoes and onions worth Rs.80/- from P.W.No.1 Sharad Gupta. He then gave a currency note of Rs.1,000/- denomination to P.W.No.1 Sharad Gupta, who after receipt of that currency note became suspicious about genuineness of the same. He, therefore, questioned the appellant/accused. The appellant/accused immediately started running away from the shop. First Informant P.W.No.1 Sharad Gupta as well as P.W.No.2 Sevalal Ramsaroj and P.W.No.3 Sushil Gupta then chased the appellant/accused and were successful in nabbing him near Tansa Pipeline. He was then taken to the Rajawadi Police Outpost of Tilak Nagar Police Station. From there, the appellant/accused was taken to the Tilak Nagar Police Station, where his personal search came to be conducted. Twenty more currency notes each of Rs.1,000/- denomination came to be recovered from his personal search and those were seized vide panchanama (Exhibit 23). The currency note of Rs.1,000/- denomination given by the appellant/accused to P.W.No.1 Sharad Gupta towards consideration after purchasing potatoes and onions was also handed over to P.W.No.5 Vijay Ahire, Station House Officer of Tilak Nagar Police Station, Mumbai.

- (b) P.W.No.1 Sharad Gupta lodged report (Exhibit 19) of the incident and accordingly Crime No.294 of 2013 for the offences punishable under Sections 489-B and 489-C of the Indian Penal Code came to be registered against the appellant/accused.
- (c) The routine investigation followed. Statements of witnesses came to be recorded and seized currency notes were sent for examination to the Government Currency Note Press, Nashik Road, Nashik. After receipt of the report that those currency notes are counterfeit currency notes, the appellant/accused came to be charge-sheeted.
- (d) The charge for the offences punishable under Sections 489-B and 489-C of the Indian Penal Code came to be framed against the appellant/accused. He pleaded not guilty and claimed trial.
- (e) In order to bring home the guilt to the appellant/ accused, the prosecution has examined in all five witnesses. First Informant Sharad Gupta is examined as P.W.No.1, whereas the FIR lodged by him is at Exhibit 19. Sevalal Ramsaroj is examined as P.W.No.2. Sushil Gupta is examined as P.W.No.3. Panch witness Chandan Singh is examined as P.W.No.4. Exhibit 23 is the seizure panchanama of twenty counterfeit currency notes seized from person of the

appellant/accused. Investigating Officer Vijay Ahire is examined as P.W.No.5.

- (f) The defence of the appellant/accused was that of total denial.
- (g) After hearing the parties, the learned trial Court by the impugned Judgment and Order came to the conclusion that the appellant/accused had used the counterfeit currency notes with the requisite knowledge and he was found in possession of twenty counterfeit currency notes having reason to believe that those currency notes were forged or counterfeit currency notes. Accordingly, the appellant/accused was convicted and sentenced as indicated in the opening paragraph of this Judgment.

3 I heard Ms.Bajoria, the learned Advocate appointed to represent the appellant/accused at the cost of the State. She vehemently argued that the prosecution has failed to prove the fact of seizure of the currency note of Rs.1,000/- denomination, which was allegedly recovered from the possession of either of the appellant/accused or from P.W.No.2 Sevalal Ramsaroj, to whom it was allegedly handed over. She further argued that evidence of the prosecution is contrary and inconsistent. Contradictions to the effect that the fake currency note was handed over to police by P.W.No.1 Sharad Gupta and P.W.No.2 Sevalal Ramsaroj are brought on record by the defence making prosecution case

doubtful. She further argued that evidence regarding seizure of alleged counterfeit currency notes from person of the appellant/accused is also suspicious.

4 As against this, the learned Additional Public Prosecutor supported the impugned Judgment and Order of conviction and resultant sentence by contending that the prosecution has proved the fact that the appellant/accused knowingly used forged or counterfeit currency note and was in possession of twenty counterfeit currency notes with requisite knowledge.

5 I have considered the submissions so advanced and perused the Record and Proceedings including oral as well as documentary evidence.

6 The prosecution, in order to establish the charges levelled against the appellant/accused, is heavily relying on evidence of three eye-witnesses to the incident in question. Those are P.W.No.1 Sharad Gupta, P.W.No.2 Sevalal Ramsaroj and P.W.No.3 Sushil Gupta. Congruous evidence of these three witnesses shows that the incident happened in the evening of 13/09/2013. They all were present at the vegetable shop when the incident in question took place. As per version of all these three witnesses, the appellant/accused came to the shop and purchased potatoes and onions. He then gave a currency note of Rs.1,000/- denomination towards consideration of the purchase

made by him. Congruous evidence of P.W.No.1 Sharad Gupta, P.W.No.2 Sevalal Ramsaroj and P.W.No.3 Sushil Gupta shows that on receiving the currency note of Rs.1,000/- denomination from the appellant/accused, P.W.No.1 Sharad Gupta raises suspicion about the said currency note and questioned the appellant/accused. The appellant/accused then started running away from the shop and he was chased by all these three witnesses. They nabbed him near Tansa Pipeline and took him to the Rajawadi Police Outpost of Tilak Nagar Police Station, Mumbai.

7 The appellant/accused, as seen from the evidence of the prosecution, was then taken to the Tilak Nagar Police Station and he was produced before P.W.No.5 Vijay Ahire, Police Station Officer. As per version of P.W.No.5 Vijay Ahire, Station House Officer, he recorded the FIR lodged by P.W.No.1 Sharad Gupta and in presence of panch witness took personal search of the appellant/accused. P.W.No.4 Chandan Singh is a panch witness to the personal search of the appellant/accused. His evidence as well as evidence of P.W.No.5 Vijay Ahire shows that twenty currency notes each of Rs.1,000/- denomination were found on person of appellant/accused and those currency notes came to be seized vide panchanama (Exhibit 23).

8 The defence tried to caste a shadow on evidence of P.W.No.1 Sharad Gupta, P.W.No.2 Sevalal Ramsaroj and

P.W.No.3 Sushil Gupta by conducting their searching cross-examination. It is suggested to P.W.No.1 Sharad Gupta that several customers visit his shop and in front of his shop, several hawkers also sit for selling vegetables. From cross-examination of this witness, it is brought on record that after catching hold of the customer, who gave currency note of Rs.1,000/- denomination, that currency note was given to the police personnel from the Rajawadi Police Outpost. It is further suggested to this witness that the accused was apprehended near Tansa Pipeline and then he was taken to Rajawadi Police Outpost. These suggestions, in fact, are strengthening the prosecution case regarding use of fake currency note, apprehending of the appellant/accused and producing him before police by the prosecution witnesses. P.W.No.2 Sevalal Ramsaroj has candidly denied the fact that the twenty currency notes were seized at the Rajawadi Police Outpost. P.W.No.3 Sushil Gupta has stated in his cross-examination that currency notes seized by police were similar to the real currency note and common man could not identify those currency notes as fake currency notes. It is brought on record from his cross-examination that, however, businessman can identify such currency note as fake currency note. It is, thus, clear that even from cross-examination of P.W.No.2 Sevalal Ramsaroj and P.W.No.3 Sushil Gupta, the defence has brought on record that it was the appellant/accused, who was apprehended near Tansa Pipeline after being chased by them and twenty currency notes

came to be recovered from him. It is seen from evidence of P.W.No.5 Vijay Ahire that separate panchanama for seizure of that currency note of Rs.1,000/- denomination was not prepared by him, but he simply took in his custody the currency note of Rs.1,000/- denomination which was given by the appellant/accused to P.W.No.1 Sharad Gupta.

9 P.W.No.5 Vijay Ahire deposed that he had sent seized currency notes vide covering letter (Exhibit 25) for examination by the Government Currency Notes Press at Nashik. Reports at Exhibit 16 and 17 do show that the Government Currency Notes Press of Nashik Road, Nashik had examined in all 21 currency notes each of Rs.1,000/- denomination sent by the Tilak Nagar Police Station, Mumbai in the subject crime and found that all those currency notes were counterfeit currency notes. It is, thus, clear that the appellant/accused had, knowingly and with reason to believe that the currency note is a fake currency note, handed over the said currency note of denomination of Rs.1,000/- to P.W.No.1 Sharad Gupta. Conduct of the appellant/accused in running away from the shop upon being asked about genuineness of the note makes it clear that the appellant/accused has reason to believe that the currency note which was given by him towards consideration for purchase of potatoes and onions was a fake currency note. Subsequent event of seizure of twenty similar currency notes each of Rs.1,000/- denomination also makes it clear that the appellant/accused was knowingly possessing the

fake or counterfeit currency notes. Thus, the appellant/accused is proved to have used as genuine a fake currency note of Rs.1,000/- denomination for purchase of potatoes and onions and similarly, he was also found to be in possession of twenty counterfeit currency notes each of Rs.1,000/- denomination. As such, no fault can be found in conviction of the appellant/accused of offences punishable under Sections 489-B as well as 489-C of the Indian Penal Code.

10 The learned trial Court has sentenced the appellant/accused for ten years rigorous imprisonment for the offence punishable under Section 489-B of the Indian Penal Code and for the offence punishable under Section 489-C of the Indian Penal Code, he is sentenced to suffer rigorous imprisonment for a period of five years. Both these sentences are directed to run separately. The learned trial Court has not assigned any reason as to why those sentences should not run concurrently. In a normal course, the learned trial Court should have given necessary reason for directing running of the sentences separately. Considering the nature of crime, I am of the considered opinion that the substantive sentences should run concurrently. Hence, the Order :

ORDER

- (i) The Appeal is partly allowed.
- (ii) Conviction as well as resultant sentences imposed on the appellant/accused for the offences punishable under

Sections 489-B and 489-C of the Indian Penal Code is maintained.

- (iii) However, the direction of the learned trial Court that both the sentences shall run separately is quashed and set aside.
- (iv) Instead, it is directed that both the sentences shall run concurrently.
- (v) With this, the Appeal stands disposed of.

(A.M.BADAR J.)