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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-2057-SB-2004

Date of Decision : February 14, 2019

Krishan Appellant

Versus

State of Haryana Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Argued by Mr. Sachin Kaushik, Advocate,
for Mr. Rakesh Nehra, Advocate,
for the appellant.

Mr. D.K. Mittal, DAG, Haryana,
for respondent-State .

SHEKHER DHAWAN, J.

Present appeal is directed against the judgment of conviction dated 4.10.2004 and order of sentence dated 6.10.2004, passed by learned Additional Sessions Judge-I, Rohtak whereby appellant - Krishan was convicted and sentenced as under:-

Under Section	Sentence	In default
489C IPC	to undergo Rigorous Imprisonment for a period of 2 year and to pay a fine of Rs.500/-	to further undergo R.I. for a period of one month.

2. Facts relevant for the purpose of decision of the appeal; that on 8.3.2003, a secret information was received by the police against the present appellant that he was to use some fake currency notes of denomination of Rs.100/- each as genuine and for that purpose, he had

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gone from Sonapat Stand, Rohtak towards Sonapat road, Rohtak and could be apprehended. On this information, the appellant was apprehended and from his search, four currency notes of denomination of Rs.100/- each bearing Nos. 6LP-636694, 6LP-636686, 9HF-323443 and 8AA-898230 were recovered and same were taken into police custody vide recovery memo.

3. After completion of investigation proceedings, challan was presented in the Court for trial.

4. During trial, learned Court below completed various proceedings of trial including framing of charge against the accused, recording of evidence of the witnesses and examination of accused under Section 313 Cr.P.C. After considering the prosecution and the defence evidence on record, learned trial Court held the appellant guilty and convicted him for commission of offence and sentenced as detailed in para No.1 above.

5. Aggrieved of passing of judgment of conviction and order of sentence, the appellant is before this Court by way of present appeal.

6. Learned counsel for the appellant contended that learned trial Judge has failed to consider the main ingredients of offence punishable under Section 489C IPC against the appellant. There was no *mens rea* on the part of the present appellant to use the fake currency notes and mere possession of such fake currency notes does not make out a case for conviction of the appellant for commission of offence under Section 489C IPC especially when the appellant had taken the plea that he was falsely implicated in this case and he had not used those currency notes in any way. Learned trial Judge has not considered the defence version as put

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forwarded in the statement of accused under Section 313 Cr.P.C. even and the impugned judgment of conviction and order of sentence are liable to be set-aside.

7. On this point, reliance was placed on the judgment from Hon`ble Apex Court in **Umashanker Vs. State of Chattisgarh, 2001(4) R.C.R. (Criminal) 444.**

8. Learned State counsel while arguing on the point, contended that the appellant was found to be in possession of fake currency notes and the same have been proved to be fake as per report (Ex. P/11) from Expert having been received in this case and there is no rebuttal to that. Learned trial Judge has already considered this aspect and plea of defence raised by the appellant and there is no ground to set-aside the judgment of conviction and order of sentence passed by learned trial Court.

9. Having considered the submissions made by learned counsel for the parties and appraisal of record, this Court is of the considered view that undisputedly, the accused was tried for commission of offence punishable under Section 489C IPC. The charge was framed under Section 489C IPC. The alleged recovery was effected on the basis of secret information having been received by the police from busy place where there was no dearth of public witness, but still no independent witness was joined by the Investigating Officer and no explanation has come forward on this point. One fails to understand that how under such circumstances, no independent witness was joined. That fact itself makes the prosecution case doubtful and the prosecution evidence is to be scrutinized in the light of that background.

10. The next point involved in this case is that as per prosecution

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case, there were no allegations that the four fake currency notes were ever used by the appellant. He had not offered the said currency notes to any body. As such, the prosecution has not been able to prove the *mens rea* on the part of the present appellant as required under Section 489C IPC. For ready reference, Section 489C IPC is being extracted hereunder:-

“489C. Possession of forged or counterfeit currency-notes or bank-notes.—Whoever has in his possession any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”

11. The above quoted provision makes it ample clear that for holding a person guilty for commission of offence of possession of counterfeit currency notes, the prosecution is also required to prove that the same were forged and counterfeit currency notes and said accused person was having the knowledge or reason to believe the same to be forged or counterfeit. This fact has been specifically denied by the accused-appellant in his statement under Section 313 Cr.P.C. That part of his statement simply cannot be brushed aside on the ground that the same had come as defence evidence from the accused person. That fact assumes more importance in light of the fact that the accused has not used the said currency notes. That way, the basic ingredients of Section 489C IPC have not been attracted in this case.

12. In the light of above, statements of prosecution witnesses become relevant and this Court would like to refer to relevant part of the

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statements of both the material witnesses, i.e. PW-1, ASI Umed Singh and PW-5, Ram Singh, Investigating Officer of this case. PW-1 has not stated anything that the currency notes were counterfeit or forged currency notes as per knowledge of the accused person or he had reason to believe so. Similarly, in the statement of PW-5, Ram Singh, he has not stated any fact his his statement. Further his cross-examination by learned defence counsel would be relevant in this regard and the relevant part is extracted below:-

... It is correct that I did not join any independent witness in the investigation of this case. I received secret information at about 8.00 p.m. When I was present at Sonapat Stand. When apprehended the accused, he was standing in front of a shop of Radha Sowami Medical Hall. I did not join the Proprietor of Radha Sowami Medical Hall in the investigation. No person came to us to complain that accused had tried to use the fake currency notes as genuine upto our proceedings conducted at the place of occurrence. None complained to me regarding efforts of any purchase by the accused. Except the said four currency notes, no other currency notes were recovered from the possession of accused. I did not put any specific identification/mark over said currency notes at the time of recovery. Accused was wearing parna at that time. No other item was recovered from inside the pockets of pants of accused. By the time I had lodged the accused in lock-up I did not receive any complaint against him for using any counterfeit notes by the accused.

13. The above lines of cross-examination establish the intention of the Investigating Officer not to join any independent witness despite availability of the same. Secondly, there was no complaint to the

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Investigating Officer by that time that the appellant had gone to use the said currency notes or he had made any such effort to purchase anything with the said currency notes. More so, except above mentioned four currency notes, no other currency note or any material document showing that he was having some material in his possession to prepare or forge the currency notes, was with him.

14. In the light of that, mens rea certainly comes into picture. It is needless to mention that mens rea is a double edged weapon and that can be used against him as well as in defence by the accused as well. In the light of the above, mens rea becomes a matter of defence for the accused in this case.

15. Similar view was taken by Hon`ble Apex Court in **Umashanker Vs. State of Chhattisgarh, 2001(4) R.C.R. (Criminal) 444** and Hon`ble Apex Court observed as under:-

“7. A perusal of the provisions, extracted above, shows that mens rea of offences under Sections 489B and 489C is, "knowing or having reason to believe the currency notes or bank-notes are forged or counterfeit". Without the afore-mentioned mens rea selling, buying or receiving from another person or otherwise trafficking in or using as genuine forged or counterfeit currency-notes or bank-notes, is not enough to constitute offence under Section 489B of I.P.C. So also possessing or even intending to use any forged or counterfeit currency-notes or bank-notes is not sufficient to make out a case under Section 489C in the absence of the mens rea, noted above. No material is brought on record by the prosecution to show that the appellant had the requisite *mens rea*. The High Court, however, completely missed this aspect.”

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16. In the present case, the alleged recovered currency notes were rather not used by the appellant at all. However, all these aspects have been completely ignored by learned trial Judge though, the above referred judgment in **Umashanker's case (supra)** was relied upon by learned defence counsel before learned trial Judge as well and the same has not been as per provisions of Section 489C IPC in the light of prosecution evidence and defence version available on the file.

17. In view of the above, the present appeal is accepted and judgment of conviction dated 4.10.2004 and order of sentence dated 6.10.2004, passed by learned Additional Sessions Judge-I, Rohtak is set-aside and the appellant is acquitted of the charge. The bail/surety bonds shall stand discharged.

(SHEKHER DHAWAN)
JUDGE

February 14, 2019

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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes