IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-1580-SB-2005 (O&M)
Date of Decision : 17.05.2019

Dharam Pal .... Appellant

versus

State of Punjab .... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by: Mr. Sarju Puri, Advocate
for the appellant.

Ms. Jaspreet Kaur, AAG, Punjab.

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MANJARI NEHRU KAUL, J.

1. The instant appeal has been preferred against the impugned judgment of conviction and order of sentence dated 11.08.2005 passed by the Addl. Sessions Judge (ad hoc), Jalandhar vide which the accused-appellant was convicted under Section 489-C IPC and sentenced to undergo rigorous imprisonment for a period of two years and also to pay a fine of ₹ 500/- and in default of payment of fine, to further undergo rigorous imprisonment for three months.

2. The case of the prosecution in brief was that in pursuance to a tip-off given by a secret informer the appellant Dharam Pal was found indulging in and in possession of counterfeit 18 Euro currency notes of the denomination of 100 Euros each. The same were taken into possession vide recovery memo Ex.PB. A case under Sections 489-B and 489-C IPC was thereafter registered against the appellant.

3. The investigation was set in motion, the accused was arrested and finally he was charged under Section 489-C IPC to which he pleaded not guilty and claimed trial.

4. In support of their case, the prosecution examined as many as 04 witnesses namely PW-1 ASI Surjit Singh, PW-2 ASI Rachpal Singh, PW-3 Inspector Jaskaranjit Singh and PW-4 Dhiraj Sharma and also tendered the relevant documentary evidence.

5. The accused when examined under Section 313 Cr.P.C. denied all the incriminating evidence, which had come on record against him. The appellant pleaded false implication and stated that in fact he was accompanying one Dilbagh Singh to Ludhiana when he was over-powered and apprehended by the police at Bus Stand Nurmahal, Phillaur on the basis of suspicion whereas Dilbagh Singh accompanying him was let off being related to a police official.

6. Learned counsel for the appellant vehemently argued that the learned trial Court gravely erred in placing reliance upon the report of PW-4 Dhiraj Sharma, Manager, Thomas Cook India Ltd., Jalandhar in holding that the Euro currency notes so recovered, were counterfeit. He further submitted that PW-4 Dhiraj Sharma was not even authorised by any government agency or the embassy concerned as an expert to give his opinion on counterfeit foreign currency notes but was only working for a private organisation and while giving his report Ex.PE qua the recovered currency notes, he did not even obliquely refer to a single distinguishing feature or mark between the notes allegedly recovered and genuine Euro currency. Learned counsel for the appellant further urged that there were

material contradictions between the testimony of PW-1 ASI Surjit Singh and PW-3 Inspector Jaskaranjit Singh, which were not appreciated by the learned trial Court and all this created a serious doubt about the veracity of the prosecution version. Still further, learned counsel submitted that as per the Investigating Officer himself the alleged recovery of Euro currency was not sealed and the same found corroboration from the fact that when these notes were produced in Court during the trial, the currency notes were taken out from an open packet qua which there was no explanation forthcoming from PW-3 Inspector Jaskaranjit Singh. Finally, it was argued and prayed by learned counsel that since the essential ingredients of Section 489-C IPC were absent, the benefit of doubt for the same should go to the appellant.

7. Learned State counsel on the contrary prayed for dismissal of the appeal by urging that no ill will has been alleged against any of the witnesses, who were responsible officers, to falsely implicate the appellant. She further urged that PW-4 Dhiraj Sharma had been working with the Foreign Exchange Section of Thomas Cook India Ltd., Jalandhar for the last many years and hence, had ample experience in distinguishing between genuine and counterfeit currency notes including Euro currency. Hence, it was by virtue of his vast experience as an expert that his opinion could not be brushed aside lightly.

8. I have given my anxious consideration to the submissions advanced by both the parties and have gone through the evidence on record.

9. Section 489-C of Indian Penal Code reads as under:

> *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.*

10. Needless to emphasize, the essential ingredients for bringing home the offence to fall under Section 489-C IPC are that firstly the currency notes should be proved to be counterfeit, and secondly, it should be in conscious possession of the accused.

11. Coming to the instant case, the first and foremost question that shall have to be answered is whether the alleged recovery of Euro currency notes from the appellant was in fact counterfeit or not. It is only, thereafter the applicability of Section 489-C IPC would come into play.

12. It would therefore be most relevant to peruse the testimony of PW-4 Dhiraj Sharma, Manager, Thomas Cook India Ltd. as well as his report Ex.PE around which the prosecution had built its case.

13. As per the advisory issued by the Reserve Bank of India in case of doubt as to the genuineness of foreign currency, the matter shall have to be forwarded to the Interpol or to the embassy concerned, which in the present case would be any one of the embassies of the countries of the European Union, for opinion. Strangely, the investigating agency for reasons best known to them, did not bother to follow the procedure prescribed. In fact the testimony of PW-4 Dhiraj Sharma completely demolishes the prosecution case as he himself has deposed in his cross-

examination during the trial and was rather honest and candid in admitting that he was not cent percent sure regarding the genuineness of the Euro currency allegedly recovered from the appellant. In fact a perusal of his testimony demolishes the prosecution case even further as he candidly deposed that he had advised the investigating agency to approach the embassy of the country concerned for obtaining an expert opinion qua the genuineness or otherwise of the alleged recoveries from the appellant. Not only this, the opinion Ex.PE rendered by PW-4 Dhiraj Sharma qua the alleged counterfeit currency notes on the face of it is completely vague as he did not even bother to indicate any distinguishing features, which would have possibly come to his notice while drawing comparison between the recovered currency notes and genuine Euro currency notes.

14. It is a case where I am of the firm view that the investigating agency has been most slipshod and casual in carrying out the investigation by giving a complete go by to the basic procedure, which ought to have been followed in such like cases. The testimony of PW-4 Dhiraj Sharma clearly establishes that this witness was not sure and confident about the genuineness of the alleged recovery of Euro currency. Hence, in this background, once it is not even conclusively established that the Euro currency allegedly recovered from the possession of the appellant was counterfeit or not, the applicability of Section 489-C IPC itself would be in doubt. Learned trial Court was thus, in error in relying upon a witness, who himself was unsure about his own opinion and who was asked to render his opinion only because of his vast experience in working in an organisation like Thomas Cook India Ltd., Jalandhar.

15. As a sequel to the above discussion, I hold that the impugned conviction of the appellant is bad in law. Accordingly, the judgment of conviction and order of sentence passed by learned trial Court is set aside and the appellant is acquitted of the charges framed against him under Section 489-C IPC.

(MANJARI NEHRU KAUL)
JUDGE

May 17, 2019
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Whether speaking/reasoned? Yes / No
Whether Reportable? Yes / No