IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision:- April 09, 2019

1. CRA-S-1886-SB-2018 [O&M]

Ramesh Gupta and another ....Appellants.

Versus

State of Haryana ...Respondent.

2. **CRA-S-1912-SB-2018 [O&M]**

Bharat Bhushan ....Appellant.

Versus

State of Haryana ...Respondent.

3. **CRA-S-1544-SB-2018 [O&M]**

Krishan Kumar ....Appellant.

Versus

State of Haryana ...Respondent.

4. **CRA-S-2397-SB-2018 [O&M]**

Birender Prasad Kushwaha ....Appellant.

Versus

State of Haryana ...Respondent.

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. Anurag Jain, Advocate
for the appellant (in CRA-S-2397-SB-2018) and
for appellant No.1 (in CRA-S-1886-SB-2018).

Mr. Munish Kumar Garg, Advocate
for the appellant (in CRA-S-1912-SB-2018) and
for appellant No.2 (in CRA-S-1886-SB-2018)
(*Amicus Curaie*).

Mr. Jitender Dhanda, Advocate
for the appellant (in CRA-S-1544-SB-2018).

Mr. D.K. Mittal, Deputy Advocate General, Haryana.

SHEKHER DHAWAN, J.

The above mentioned four appeals arise out of common judgment of conviction dated 26.03.2018 passed by learned Additional Sessions Judge, Hisar, whereby the appellants were convicted under Section 489C of IPC and were sentenced to undergo rigorous imprisonment for seven years and to pay fine of Rs.5,000/- each and in default of payment of fine further undergo rigorous imprisonment for six months, vide order of sentence dated 30.03.2018. Therefore, with the consent of the parties all these appeals are taken up together and are being disposed of by this common judgment.

2. The allegations against the appellants are that on 20.10.2013, police party was on patrolling duty and was present at Hisar Octroi, Hansi. Secret information was received to the effect that 3 – 4 outsiders were having some fake currency notes and in a try to use the same and also selling fake currency notes in double to one original currency note. Raiding party was constituted and as per secret information, four persons were apprehended who disclosed their names, Mahender Singh, Birender

Parshad Kushwaha, Ramesh Gupta and Kameshwar and the following fake currency notes were recovered from them:-

Name of the accused	**Currency recovered**	**Denomination**
Mahender Singh (PO)	100 notes	Rs.500/- each
Bijender Parsad Kushwaha	50 notes	-do-
Ramesh Gupta	70 notes	-do-
Kameshwar	20 notes	-do-

3. All the fake currency notes were converted into separate parcels and sealed on the spot and taken into police custody.

4. On 21.10.2013 accused, Krishan Kumar and Bharat Bhushan were arrested and from the possession of accused Bharat Bhushan, fake Indian Currency Notes worth Rs.7,000/- were recovered and from the possession of accused Krishan Kumar, fake Indian Currency Notes worth Rs.5,000/- were recovered. Investigation formalities were completed and challan was presented in the Court for trial.

5. 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 appellants guilty and convicted them for commission of offence and sentenced as detailed in para No.1 above.

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

7. Learned counsel for the appellants at the time of arguments contended that the prosecution case has not been proved against the

accused persons. The allegations against the appellants are of commission of offence punishable under Section 489-C IPC. The basic ingredients of offence under Section 489C IPC are not made out against the appellants because the prosecution has failed to prove that the fact that the alleged currency notes were fake to the knowledge of the appellants and they had used them as fake currency notes. If the entire statements of the prosecution witnesses especially the recovery witnesses are taken into consideration, the allegations are just of effecting recovery of some notes which were later on found to be fake as per report received from the Forensic Science Laboratory (H), Madhuban, Karnal. The same does not constitute offence punishable under Section 489C IPC. PW-7, Narender Kumar, Senior Scientific Officer (Documents), Forensic Science Laboratory (H), Madhuban, Karnal has deposed that the notes which were sent for analysis purpose were found to be fake. However, PW-8, Inspector Parteek Kumar, who was Investigating Officer of this case, has simply proved the recovery of alleged currency notes, but there is no allegation or material or evidence available on the file that the said currency notes were fake to the knowledge of the appellants. There was no *mens rea* on the part of the present appellants to use the fake currency notes and mere possession of such fake currency notes does not make out a case for conviction of the appellants 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.

8. Learned State counsel while arguing on the point, contended that the prosecution case has been proved duly because the currency

notes recovered from the possession of the appellants were found to be fake as per report of FSL and they were have conscious possession of the said currency notes. As such, they have been rightly convicted and sentenced as per law and the present appeals are liable to be dismissed.

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-appellants 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. In such circumstances, it is not understandable as to why 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 case, there were no allegations that the fake currency notes were ever used by the appellants. They 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 their statement simply cannot be brushed aside on the ground that the same had come as defence evidence from the accused persons. That fact assumes more importance in light of the fact that the accused have not used the said currency notes. That way, the basic ingredients of Section 489C IPC have not been attracted in this case. Further, there was no complaint to the Investigating Officer that the appellants had gone to use the said currency notes or they had made any such effort to purchase anything with the said currency notes. More so, except above mentioned currency notes, no other material document showing that they were having some material in their possession to prepare or forge the currency notes, was with them.

12. 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.

13. 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 ."

14. Identical view was taken by Hon`ble Apex Court in **M. Mammutti Vs. State of Karnataka, 1979 AIR (SC) 1705** and co-ordinate Bench of this Court in **Saiyyad Iftikhar Hussain Vs. State of Punjab, 2004 (3) R.C.R. (Criminal) 487.** In the present cases, the alleged recovered currency notes were rather not used by the appellants at all. However, all these aspects have been completely ignored by learned trial Judge

15. In view of the above, the present appeals are accepted and judgment of conviction dated 26.03.2018 and order of sentence dated

30.03.2018, passed by learned Additional Sessions Hisar are set-aside and the appellants are acquitted of the charge. The appellants be released from custody in this case, if not required in any other case. Their bail/surety bonds shall stand discharged.

(SHEKHER DHAWAN)
JUDGE

April 9, 2019
som

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

SOM PARKASH
2019.04.09 15:18
I attest to the accuracy and integrity of this document