AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 958 of 2001

Ramsevak @ Bholu, S/o Lalchand Agrawal, aged about 24 Years, R/o Rajgamar, P.S. Balkonagar, Tahsil & Distt: Korba, Chhattisgarh

---- Appellant

Versus

State of Chhattisgarh, Through Police Station : Balkonagar, Distt. Korba, Chhattisgarh

----Respondent

For Appellant :Shri A.K. Ansari, Advocate
For Respondent/State :Shri Vikash Shrivastava, P.L.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

06.02.2020

(1) This appeal is directed against the judgment of conviction and order of sentence dated 05.10.2001, passed by Additional Sessions Judge, Korba (C.G.) in Sessions Trial No. 129/89, whereby the appellant/accused stands convicted & sentenced as under:

Conviction	Sentence
Under Section 489 B of Indian Penal Code	Rigorous imprisonment for 7 years with fine of Rs.500/-, in default of payment of fine, to further undergo simple imprisonment of two months.

Under Section 489 C of Indian Penal Code	Rigorous imprisonment for 5 years with fine of Rs. 500/-, in default of payment of fine, to further undergo simple imprisonment of two months. Both the sentences were ordered to run concurrently.

(2) Case of the prosecution in brief, is that appellant is the account holder in the State Bank of India, Branch at Ompur. On 03.05.1988 at about 1.30 pm, when appellant went to the Bank for depositing the amount of Rs. 665/- in his saving account held in the said Bank, the notes were examined by the Bank authority and two notes of 100 denomination were found torn, therefore, two notes of Rs. 100/- were returned to the appellant and remaining one note of Rs. 100/- was kept by the bank Manager for examination as the said note of Rs. 100/- bearing No. 7AB 420300 was *prima facie* found fake & forged by the Bank authority and, therefore, the said forged note of Rs.100/- was examined by the Bank Manager and he prepared a report Ex. P/2 regarding receiving of counterfeit currency note from the appellant in presence of bank employees and other independent witnesses as a result thereof, the report was lodged by the Bank Authority before Out Post Rajgamar and thereafter FIR vide Ex. P/7 was lodged at Balkonagar Police Station in Crime No. 145/1988. During investigation, one passbook relating to saving account of the appellant was seized vide Ex.P-1. As per document Ex. P-2, counterfeit currency note of Rs.100/- was recovered from the appellant by the Branch Manager of State Bank of India, Branch at Ompur in presence of independent

witness and bank Officials. The said note bearing No. 07AB 420300 was examined by Bank Note Press, Dewas and it is found to be forged and fake as per Ex. P/3. As per Ex. P/4-A, written complaint was lodged by Branch Manager of State Bank Indore on 20.05.1988 thereafter, on the basis of which, FIR (Ex.P-7) was lodged. Pay slip of Rs. 665/- signed by the appellant and one note bearing No. 07AB420300 was seized from the Branch Manager, SBI, Branch at Ompur and the seizure memo to this effect was prepared vide Ex. P/5.

(3) After usual investigation, charge-sheet was filed against the accused appellant under Sections 489 B and 489 C of the Indian Penal Code. Thereafter, the trial Court framed charges under Sections 489 B and 489 C of IPC against the appellant which was denied by him and he prayed for trial.

(4) So as to hold the accused/appellant guilty, the prosecution examined as many as 12 witnesses namely- Ramesh Sahu (PW-1), Aditya Kumar Sharma (PW-2), Dev Singh (PW-3), Radhe Lal Dewangan (PW-4), T.R. Nimje (PW-5), Ramesh Goutam (PW-6), Dheerendra Kumar Singh (PW-7), Dr. K.P. Tiwari (PW-8), S.C. Raikwar (PW-9), Lalji Shukla (PW-10), Chhedilal (PW-11) and Budhwar (PW-12). Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. No defence witness has been examined on behalf of accused/appellant.

(5) The trial Court after hearing counsel for the respective parties and

considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellant as mentioned in opening paragraph of the judgment.

(6) Learned counsel for the appellant submits that appellant has been falsely implicated in the crime in question as there is no evidence on record connecting him with the crime. He submits that if the report Ex.P/2 regarding receiving of counterfeit currency note was prepared by the Branch Manager, State Bank of India, Branch at Ompur, as to why the signature of the appellant was not obtained by the Branch Manager in the said report (Ex.P-2), that too, when the said panchanama was prepared, the accused/appellant was there for about one hour in the bank, therefore, the conduct of the Branch Manager was doubtful. He also submits that Bank Manager - Ramesh Goutam (PW-6) has admitted this fact in his court statement that accused/appellant was running grocery shop and one bicycle shop in village- Ompur and during the business of grocery and bicycle shop, customers visited frequently and gave him currency notes during business transaction, therefore, only the signature of the Bank Manager in the said report (Ex.P-2) is not sufficient to prove that such a report is true/correct report. He also submits that no independent witness was examined to prove the fact that Rs. 100/- bearing No. 07AB420300 was deposited by the appellant in the Bank knowing it to be forged and, therefore, the appellant deserves to be acquitted of the charges framed against him.

(7) On the other hand, counsel for the State, while supporting the

impugned judgment, would submit that the trial Court after appreciating the oral and documentary evidence available on record convicted and sentenced the accused/appellant for the aforesaid offences, which does not call for any interference in the instant appeal.

(8) I have heard learned counsel appearing for the parties and perused the material available on record including judgment impugned.

(9) It is not disputed by both the parties that as per Ex. P/3 note examination report of Bank Note Press, Dewas, the alleged Note of Rs. 100/- bearing No. 07AB420300 examined by T.R. Nimje (PW-5)-Technical Officer was found to be fake and forged one.

(10) The conviction of the appellant by the trial Court is under Section 489-B and Section 489-C of the Indian Penal Code, which read as under :-

> "**489B. Using as genuine, forged or counterfeit currency-notes or bank-notes. -** Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or use as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extent to ten years, and shall also be liable to fine.
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> **489C. Possession of forged or counterfeit currency-note 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) A perusal of the provisions extracted above shows that *mens rea* of offences under Sections 489-B and 489-C is “knowing or having reason to believe the currency notes or banknotes are forged or counterfeit”. Without the aforementioned *mens rea* selling, buying or receiving from another person or otherwise trafficking in or using as genuine forged or counterfeit currency notes or banknotes, is not enough to constitute offence under Section 489-B IPC. So also possession or even intending to use any forged or counterfeit currency notes or banknotes is not sufficient to make out a case under Section 489-C in the absence of the *mens rea*, noted above. [**See : Umashanker v. State of Chhattisgarh**[1] **]**

(12) From careful perusal of the evidence of the prosecution witnesses and the aforesaid provisions, it is apparent that appellant on 03.05.1988 at about 1.30 P.M. while depositing Rs.665/- in his saving account held in State Bank of India, Branch : Ompur, used one fake currency note of Rs.100/- which was kept in his possession and was shown as genuine note. When out of total notes of Rs. 665/-, one note of Rs.100/- was, *prima facie*, found forged & fake by the Bank Manager of the Bank, the said note was kept in his custody and as per document (Ex. P/2) panchanama was prepared in presence of the bank officials.

1 (2001) 9 SCC 642

The above said fact was duly reiterated by Radhe Lal Dewangan (PW-4), who was working as Cashier in the SECL, Rajgamar at the relevant point of time and was present in the Bank at the time of incident. He has stated that on the date of incident, the accused/appellant met with the Bank Manager and thereafter Bank Manager stated that out of total notes of Rs. 665/-, one note of Rs. 100/- is found fake and then Panchnama (Ex. P-2) was prepared in presence of Bank officials and other villages, thus, there is no reason whatsoever to disbelieve the statement of aforesaid witness Radhelal (PW-4).

(13) Chhedilal (PW-11), has also supported the case of the prosecution to some extent by stating that on the date of incident the accused/appellant went to the Bank for depositing Rs. 665/-, Bank authority, while examining the notes, found one note of Rs. 100/- to be fake and forged and thereafter Panchnama (Ex. P-2) was prepared in presence of Bank officials and other witnesses, who were present at the time of incident, thus, there is no reason whatsoever to disbelieve the statement of aforesaid witness. Apart from this, it is also apparent from perusal of the records that there is no previous enmity between Branch Manager & other employees and the accused/appellant.

(14) Now, I go through the conduct of the appellant and evidence available on record. Though the appellant, in his statement recorded under Section 313 of Cr.P.C., has taken a specific defence that he has been falsely implicated in the crime in question but no defence witness was examined on behalf of the appellant in support thereof. The

saving account of the appellant is in the State Bank of India, Branch at Ompur vide Seizure memo (Ex.P-1) and there was only Rs. 51.66/- in his account as on 15th June, 1988. The above fact is not disputed by either of the parties.

(15) Thus, looking to the overall conduct of the appellant and the evidence available on record it is apparent that neither he was absconding from the place of occurrence nor his conduct was found doubtful; and he deposited the amount of Rs. 665/- through deposit form duly signed by him.

(16) Calcutta High Court in the matter of **Madan Lal Sarma v. The State** reported in **1990 Cri.L.J. 2015**, has held as under :

> "5. Under S. 489B, I.P.C. the burden is on the prosecution to prove that at the time when the accused was passing the note he knew that it was a forged one. The mere possession of it by him does not shift the burden to the accused to prove his innocent possession of the forged note. Similarly, under S.489C, it is to be proved that the accused intended to use the forged or counterfeit currency note as genuine or it might be used as genuine. It is for the prosecution to prove the circumstances which would irresistibly lead to the conclusion that the accused had the intention to introduce surreptitiously the note on the public. Thus knowledge or reason to believe that the note was forged has to be proved to fix the liability under Section 489B and 489C.
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> 6. It is not in dispute that the petitioner was in possession of the note alleged to be forged. But the question is whether he knew or he had reasons to believe that the said note was a forged note.
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> 10. Unless it is found that the accused has the

> knowledge or reason to believe that the said questioned note was a forged one, the question of palming it off as genuine could not arise."

(17) Applying the ratio of law laid down by the Supreme Court and the Calcutta High Court in the matter of **Umashanker** (supra) & **Madan Lal Sarma** (supra), respectively in the facts & circumstances of the case, it is quite apparent that appellant had given Rs. 600/- cash and one cheque of Rs.65/- through pay slip for depositing the amount, which was duly signed by him, in the bank and when the Bank Manager of the said Bank, while receiving the said amount for deposit, noticed that one of the notes of 100 denomination given by the appellant bearing No 07AB420300 appears to be forged, he prepared a Panchanama Ex.P/2 in this regard. It is admitted fact that the appellant stayed for about one hour in the bank during preparation of panchnama (Ex.P-2). It is also not disputed by the prosecution that the appellant is running grocery shop & bicycle shop where during the course of business, transaction of money takes place between the customer & the appellant. Thus, prior to deposit of the counterfeit note and after depositing the same, the conduct of the appellant was very much normal and natural which shows that he had no knowledge or reason to believe that only one alleged note of Rs. 100 was a forged and fake one.

(18) Now, it is significant to note that Shri T.R. Nimje (PW-5), who is the Technical Officer of the Bank Press Note Dewas, has admitted in paragraph 6 of his statement that it is not possible for a common man to identify whether the said note is counterfeit or not, only expert can

prove this fact that the note is counterfeit/forged or not. The report (Ex.P/3) submitted by T.R. Nimje (PW-5) shows that alleged forged note appears to be genuine note as its printing style, size of note and thickness of note were just like of genuine note. Only registered printing color and number were not found as per the genuine note.

(19) Therefore, looking to the entire facts & circumstances of the case, the evidence available on record, this Court comes to the conclusion that it was not possible for the common man to identify the genuineness or correctness of the note in question as admitted by Shri T.R. Nimje (PW-5), Technical Officer of the Bank Press Note, Dewas and prosecution has failed to prove that the appellant was having knowledge that the alleged note was a forged one or he knew that he kept forged note and thus used the same as genuine, therefore, in my opinion, the offence under Sections 489-B & Section 489-C is not made out against the accused/appellant beyond all reasonable doubt.

(20) Accordingly, the appeal is allowed. Impugned judgment dated 5.10.2001 convicting and sentencing the appellant is set aside and the appellant is acquitted of the charges framed against him. The appellant is reported to be on bail, therefore, his bail bond shall remain in force for a period of six months from today in terms of provisions of Section 437A of Cr.P.C.

Sd/-

(Gautam Chourdiya)
Judge

Amita