

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 22-11-2019

Delivered on 30-01-2020

CRA No. 224 of 2003

- Hasit Prasad Gupta s/o. Jayram Gupta aged about 25 years, resident of village Charmar, Police Station Gharghoda, District Raigarh (CG).

---- Appellant

Versus

- State of Chhattisgarh through Police Station Incharge Gharghoda, Raigarh (CG).

---- Respondent

For Appellant : Mr. D.K. Gwalre, Advocate.

For respondent/State : Mrs. Subha Shrivastava, PL.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 31-1-2003 passed by the Additional Sessions Judge, Raigarh (CG) in Sessions Trial No. 157 of 2001 wherein the said Court has convicted the appellant for commission of offence under Sections 489-B and 489-C of IPC, 1860 and sentenced him to undergo rigorous imprisonment for five years and to pay fine of Rs.5000/- on each count with default stipulations.

2. As per version of prosecution, on 26-5-2001, appellant deposited certain amount in District Co-operative Central Bank, Raigarh Branch in which 11 currency notes of Rs.500 denomination were suspected. The cashier of District Co-operative Central Bank, Raigarh Branch, reported the matter and said currency notes were sent for examination to Currency Note Press, Nasik where all the 11 notes were found to be counterfeit. The matter was reported and investigated. After completion of trial, appellant was charge-sheeted and convicted as mentioned above.

3. Learned counsel for the appellants would submit as under:

- i) As per version of Pradeep Sharma (PW/1) (para 3), Bharat Ram Yadav (PW/2) (para 2) and Makhanlal Sao (PW/3) (para 2), it is clear that currency notes were not in possession of the appellant but it was in possession of Naresh Kumar Agrawal.
- ii) When currency notes were received from Naresh Kumar Agrawal, it cannot be said that the appellant was in possession of currency notes and used the same as genuine.
- iii) The trial court has not evaluated the

evidence properly, therefore, finding of the trial court is liable to be set aside.

4. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshalling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. The question for consideration of this court is whether the appellant was in possession of counterfeit currency notes and he used the same as genuine.

7. To substantiate the charge, prosecution has examined as many as 17 witnesses.

8. Pradeep Sharma (PW/1) deposed (para 3) that on inquiry appellant informed that currency notes were given to him by Naresh Kumar Agrawal who is resident of Nawapara. As per version of this witness, Naresh Kumar Agrawal was contacted through telephone and thereafter his brother namely Kailash Chandra Agrawal came to the Central Co-operative Bank, Gharghoda and admitted that

currency notes were given to appellant by Naresh Kumar Agrawal. Bharat Ram Yadav (PW/2) also deposed that Kailash Chandra Agrawal admitted before the Branch Manager that currency notes were given to the present appellant by him. Makhanlal Sao (PW/3) deposed (para 2) on same line. All the witnesses have admitted that appellant though deposited currency notes in Bank, but he is not real possessor of the currency notes but Naresh Kumar Agarwal had given currency notes to him to deposit in the Bank, therefore, real possessor of the currency notes is Naresh Kumar Agrawal and Kailash Chandra Agrawal. There is no evidence that appellant had any guilty mind regarding possession of the currency notes. He was firm while inquiring about currency notes that same was handed over to him by Naresh Kumar Agrawal and Kailash Chandra Agrawal. He has not deviated from his version which is available at first instance. There is nothing on record that the appellant had any consent for illegal act of circulating counterfeit or forged currency notes, therefore, his act has no *mens rea* and in absence of *mens rea* it cannot be said that he was in possession of currency notes knowing it to be counterfeit and used the same as genuine. Both the charges are not established against him. Finding arrived at by the trial court is not sustainable.

9. Accordingly, the appeal is allowed. Conviction of the appellant is hereby set aside. He is acquitted of the said charges framed against him. The appellant is reported to be on bail. His bail bonds

shall continue for further period of six months in view of Section 437-A of Cr.P.C.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju