

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 477 of 2008**

- Radheshayam Veshnav, S/o Madhav Das Veshnav, aged about 45 years, Rajmistri, R/o Gram- Parsada-Kala, Police Station Baradwar, District- Janjgir-Champa (Chhattisgarh).

---- Appellant**Versus**

- State of Chhattisgarh, through Station House Office, Police Station Kharasia, District- Raigarh (Chhattisgarh).

----Respondent

For Appellant : Smt. Usha Chandrakar, Advocate
 For Respondent/State : Shri H. S. Ahluwalia, Dy. A. G.

Hon'ble Shri Justice Gautam Chourdiya
Judgment on Board

08.10.2020

(1) Proceedings of the matter have been taken-up and heard through video conferencing.

(2) This appeal is directed against the judgment of conviction and order of sentence dated 29.02.2008, passed by 4th Additional Sessions Judge, (FTC) Raigarh (C.G.) in Sessions Trial No. 143/2007, whereby the appellant/accused stands convicted & sentenced as under:

Conviction	Sentence
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Under Section 489 B of Indian Penal Code	Rigorous imprisonment for 7 years with fine of Rs.1,000/-, in default of payment of fine, to further undergo rigorous imprisonment of two months.
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(3) Case of the prosecution in brief, is that on 03.06.2007 at about 12.00 noon at village Rani Sagar near Patel betel shop (Thela)/tea stall, accused/appellant - Radheshyam Veshnav had taken snacks of Rs. 50/- and for payment of the said amount, he gave a note of Rs. 500/- to owner of the betel shop (Thela)/tea stall. The owner of the tea stall- Ramesh Kumar @ Roop Narayan doubted the genuineness of the said note, therefore, he returned the said note to the appellant saying that he has no change, thereafter, the accused/appellant gave another note of Rs.100/- to the owner of the betel shop (Thela)/tea stall and the owner again doubted the genuineness of the note of Rs.100/- and returned the same to the appellant/accused. Thereafter, the owner went to the back side of shop and informed the Police Station Kharsia through his mobile with regard to the fact that the accused is having counterfeit notes. When the police party reached the place of occurrence, on the report of complainant – Ramesh Kumar @ Roop Narayan, Dehati Nalishi (Ex.P-1) was registered. It is alleged that accused/appellant was using forged currency note as a genuine note and was found in possession of total 26 notes of 500 denomination i.e. Rs. 13,000/- and 6 notes of 100 denomination i.e. Rs. 600/- vide Ex. P/08 at Rani Sagar village and, thereafter, the accused/appellant was immediately arrested vide Ex. P/9 and FIR was lodged on the same

day vide Ex.P/11 relating to the offence punishable under Section 489 B of the IPC. The seized notes were examined by the Bank Authority, Raigarh and found that the seized notes appear to be the counterfeit notes. A notice under Section 91 of the Cr.P.C. was also given to the accused by the investigating agency stating that whether he had any relevant documents relating to the fake currency notes of Rs. 13,600/-, in response to which, he replied that he did not have any relevant documents relating to aforesaid counterfeit currency notes.

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

(5) So as to hold the accused/appellant guilty, the prosecution examined as many as 09 witnesses namely- Ramesh Kumar @ Roop Narayan (PW-1), Chhotelal (PW-2), Uma Shankar Nayak (PW-3), Ramarao Duba (PW-4), Narendra Upadhyaya (PW-5), Gorelal Patel (PW-6), Bahrata Giri (PW-7), S. C. Chauhan (PW-8) and M. R. Kashyap (PW-9). 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. He had taken a defence that he sold his cattle (Ox) for a sum of Rs. 15,100/- to one person namely- Vikram Chauhan and from him he had received Rs. 13,500/- and from it the alleged notes of Rs.500/- & Rs. 100/- were given to the owner of the betel shop i.e. complainant -Ramesh Kumar @ Roop Narayan.

However, no defence witness has been examined on behalf of accused/appellant.

(6) 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 the second paragraph of the judgment.

(7) Learned counsel for the accused/appellant submits that the accused/appellant has been falsely implicated in the crime in question as prosecution has failed to prove that the notes which were seized from the possession of the accused/appellant, are fake and forged. He also submits that independent witnesses have not supported the case of the prosecution and the present appellant sold their cattle (Ox) to one Vikram Chauhan and the said counterfeit currency notes of Rs.13,500/- were received from him, therefore, accused is not liable for conviction under Section 489 B of the IPC and he deserves to be acquitted of the aforesaid charge.

(8) On the other hand, counsel for the State, while supporting the impugned judgment, would submit that accused/appellant himself admitted this fact in his examination recorded under Section 313 of Cr. P.C. that total 26 notes of 500 denomination were seized from him but pleaded ignorance about the same being counterfeit. However, from the evidence adduced by the prosecution it has been proved that the appellant was using the said fake currency notes as genuine and therefore, the trial Court has rightly convicted and sentenced the appellant by the impugned judgment which call for no inference by this

Court.

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

(10) Admittedly, as per Note Examination Report (Ex. P-7), the alleged notes of Rs. 500/- (26 in number) bearing No. 2AR 571983 series and also notes of Rs. 100/- (6 in number) bearing No. 6GM 657546 series examined as per guideline and master order of Reserved Bank of India, Nagpur which was found to be fake and forged one by Branch Manager, State Bank of India.

(11) The conviction of the appellant by the trial Court is under Section 489-B 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.

(12) A perusal of the provisions extracted above shows that *mens rea* of offence under Section 489-B 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.

(13) Ramesh Kumar @ Roop Narayan (PW01), who is owner of the betel shop/tea stall from where the accused/appellant had taken snacks, has stated in his evidence that after taking tea & snacks from his shop the accused /appellant had given Rs.500/- for paying the bill. As he doubted the genuineness of the said note, he returned the said note to the accused/appellant and, thereafter, the accused gave him another note of Rs. 100/-, which was also found *prima facie* forged & fake, thereafter he informed the police through his mobile phone and police party came there and arrested the accused and seized the counterfeit currency notes and, thereafter, FIR (Ex.P-11) was lodged against the accused. This witness has also identified the accused in the Court and was firm in his cross- examination with regard to the fact as stated in his examination in chief. In his presence, Dehati Nalishi (Ex.P/1) and Spot Map (Ex. P/2) were also prepared. Thus, there is no major contradiction & omission in his statement.

(14) Chhotelal (PW02) - father of Ramesh Kumar @ Roop Narayan (PW01) has also stated that accused took Snacks in his son's hotel and gave Rs. 500/- note to his son, the said note seemed to be forged & fake, then he informed the police and police reached at the place of occurrence and took him (accused) in custody. The police also found 26 notes of 500 denomination and six notes of 100 denomination in exclusive possession of the accused/appellant. Thus, there is no major contradiction in his statement and he was firm on his whole statement and supported the statement of Ramesh Kumar @ Roop Narayan

(PW01). There was no previous enmity or dispute of Ramesh Kumar @ Roop Narayan and Chhotelal (PW02) with the accused, therefore, there is no doubt whatsoever in the facts as narrated by complainant Ramesh Kumar @ Roop Narayan Patel in the FIR (Ex.P-11).

(15) Umashankar Nayak (PW-3)- Police Constable has also stated in his evidence that on 3.6.2007, after receiving information that one accused was having counterfeit currency notes in his possession at village Ranisagar, Policy party headed by S.C. Chauhan reached at the place of occurrence and completed the proceedings/investigation.

(16) Ramarao Duba (PW-4) – Bank Manager, State Bank of India, Kharsia Branch, has stated in his evidence, the alleged notes of 500 denomination (26 in number) bearing No. 2AR 571983 series and notes 100 denomination (6 in number) bearing No. 6GM 657546 series sent by Station House Officer, Kharsia to the Bank for its examination in sealed cover were found to be forged and fake notes. Narendra Upadhyaya (PW-5) – Home guard has also stated in his evidence that from the exclusive possession of the accused/appellant 26 counterfeit notes of 500 denomination and six counterfeit notes of 100 denomination were seized in his presence.

(17) Gorelal Patel (PW06) & Baharta Giri (PW-7) are the witnesses of seizure and they admitted their signature on seizure memo Ex. P/8 and partly proved the said document.

(18) From careful perusal of the evidence of the prosecution witnesses and also the provision contained in Section 489-B of the IPC, it appears that accused was having 26 counterfeit notes of 500

denomination & six counterfeit notes of 100 denomination in his possession, which he was using as genuine notes. So far as defence taken by the accused/appellant that he received the aforesaid fake & forged notes from one Vikram Chauhan is concerned, to prove this fact neither he produced the said Vikram Chauhan as his defence witness nor any documents produced by him with regard to sell of his cattle (Ox), in absence whereof, it cannot be held that accused/accused has not committed the aforesaid offence. Therefore, the trial Court is absolutely justified in convicting and sentencing the accused/appellant for the offence punishable under Section 489-B of the IPC.

(19) In view of foregoing, the criminal appeal, being devoid of merit, is liable to be and is hereby dismissed. It is reported that the appellant has completed his jail sentence and released from jail, therefore, no further order regarding surrender, arrest etc. of the appellant is required to be passed.

Sd/-

(Gautam Chourdiya)
Judge