IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 511 OF 2003

Devidas Mahadeo Hirode @ Joshi]
Age: 42 years, R/o. 615, Kalpak Society,]
Room No.26, Charkop, Kandiwali (w).]
Mumbai-67.]
Now R/at Nilam Co.Op.Hsg.Soc.]
2nd Floor, Room No.206, Char Rasta,]
Road No.5, Near Depot, Charkop,]
Kandiwali (W). Mumbai -67]
Presently lodged in Thane Jail,] ….. Appellant

VERSUS

State of Maharashtra] ….. Respondent

Mr.Aniket Vagal, Advocate for Appellant.
Mr. A.R. Kapadnis, APP for the State. (both physically appeared in Court.)

CORAM : PRAKASH D. NAIK, J.
JUDGMENT RESERVED ON : 02nd SEPTEMBER 2020
JUDGMENT PRONOUNCED ON : 30th SEPTEMBER 2020

JUDGMENT :

1 The appellant has been convicted for the offences under Sections 256, 259 of Indian Penal Code (for short “IPC”) and sentenced to undergo imprisonment for a period of five years on each count with direction that both the sentences shall run concurrently.

2 The prosecution case is as under:-

Information was received by Police that two persons are carrying counterfeit Government Stamps. Watch was kept on them. In the vicinity of station house Kashimira, near bus stop. On 24th November 1999, Accused No.1 and Accused No.2 appeared on the scene carrying one bag each in their hand which tallied with the information emanating from the informer. They were apprehended along with material and bags. The accused No.1 was carrying about 370 sheets of counterfeit Government Stamps of Rs. 10/- denomination. Accused No.2 was carrying two bundles of 600/- sheets each stamps of Rs. 5/- and 2/- denominations. On further probe through interrogation the accused No.3 (Appellant) was traced out and subjected to interrogation. He disclosed the place where contraband material was stored. Pursuant to that material consisting of equipment and material used for manufacturing the counterfeit stamps and fake stamps were recovered. The stamps were in huge quantity. The accused were arrested. On completing investigation charge sheet was filed.

3 Charge was framed against all three accused by order dated 31st January 2003 for offences under Sections 255, 256, 257, 258, 259 and 260 read with Sections 420 and 465 read with Section 34 of the IPC. It was a composite charge against all the accused.

4 The prosecution examined six witnesses. Statements of the accused were recorded under Section 313 of Criminal Procedure Code (for

short “Cr.P.C.”). By judgment and order dated 27th March 2003, the Learned Ad-hoc Additional Districts and Sessions Judge, Thane convicted Accused No.1 Mukesh Mashrur and accused No.2 Dinanath Bhimrao Patil under Section 259 of IPC. Accused No.1 was sentenced to undergo imprisonment for a period of two years and pay fine of Rs. 25,000/- and in default to undergo imprisonment for a period of one year. Accused No.2 is sentenced to imprisonment for a period equivalent to the one he has undergone jail as under trial, with benefit of set off for both. The accused No.3 (appellant) was convicted under Section 256 and 259 of I.P.C. and sentenced to undergo imprisonment for a period of five years for each offence. Accused No.1 and Accused No.2 were acquitted for all the other offences under Sections 255, 256, 257, 258, 260 and Sections 420, 465 read with Section 34 of the IPC. Accused No.3 (appellant) was acquitted of the offences punishable under Sections 255, 257, 258, 260, 465, 420 read with Section 34 of the IPC.

5 During the pendency of this appeal, sentence of imprisonment has been suspended by releasing the appellant on bail vide order dated 30th April 2003.

6 Shri. Aniket Vagal, learned Advocate for the appellant advanced following submissions:

(i) The trial Court has committed an error in convicting the appellant and sentencing him to undergo imprisonment for five years. On the same evidence accused No.1 was sentenced to imprisonment for two years and accused No.2 was sentenced to undergo imprisonment for a period of equivalent to one he has undergone in jail as under trial prisoner which was approximately for six months. Hence, the punishment awarded to the appellant is disproportionate and discriminatory.

(ii) There are discrepancies and contradictions in the testimony of recovery panch and Investigating Officer.

(iii) The prosecution has not proved that the premises from where counterfeit stamps and the material was recovered belongs to the appellant.

(iv) There is no documentary evidence to establish that the house from where the recovery was made belongs to the appellant.

(v) The information about possession of the counterfeit Government Stamps was received about accused No.1 and accused No.2. They were apprehended on 24th November 1999. The appellant was arrested on 25th November 1999. There is no evidence to show that on what basis the appellant was apprehended by the Police.

(vi) The Police Officer who arrested the appellant has not been examined. PW No.6 has stated that, the involvement of the appellant was disclosed on 28th November 1999, during the interrogation of co-accused. However, the appellant was arrested on 25th November 1999. PW No.2 did not refer to arrest of appellant. The articles were not sealed. The driver of the Tempo from which the counterfeit Government Stamps were transported has not been examined.

(vii) The report about the genuineness of the Government Stamps is not exhibited in evidence. The copy was not furnished to the accused. The Trial Court however relied upon the findings in the report.

7 Learned APP submitted that, accused No.1 and accused No.2 were arrested on spot. The accused No.3 (appellant) was arrested during the trial. His involvement was revealed during interrogation of accused No.1 and there is no cross-examination at the instance of the accused in respect to the arrest. There is no cross-examination with regard to the ownership of

the house from where the counterfeit Government Stamps and other articles were seized. The prosecution has established that in pursuant to memorandum statement of the appellant in accordance with Section 27 of the Evidence Act, discovery of huge quantity of stamps worth more than Rs.2 crores were seized from the premises where the appellant had lead the police and panchas. The co-accused were also convicted. The panch witnesses cannot be disbelieved. There is no effective cross-examination at the instance of the advocate for the appellant to discard the evidence of panch witnesses with regard to recovery.

8 Navnath Kavde (PW No.1) has deposed that, on 24th November 1999 at about 01:00 a.m., trap was arranged at Kashimira Naka in the presence of panch and PSI Juvekar. The information was received by Mr. Juvekar. Two persons appeared on the scene, they were apprehended. Their personal search was conducted in the presence of panch witness. Accused No.1 was in possession of rexin bag containing Government Stamps of Rs. 10 denomination in the quantity of 370 sheets each having 200 stamps. Accused No.2 was carrying gunny bag containing 600 sheets of Government stamps of Rs. 5/- denomination and 600/- sheets Government Stamps of Rs.2/- denomination. Each sheets of these two articles contains 200 stamps. These items were seized right on the spot. Panchnama was drawn. In the

cross-examination he stated that, each accused was having one bag of stamps. The bundles of stamp of Rs. 10/- denomination in 370 sheets were found with accused No.1. He was shown the articles, gunny bag containing article A-2 and stamp bundle article A-3 which were found with accused No.2. When the accused No.1 was holding the bag with stamp bundle, the stamps were not visible from outside.

9 Vishnu Shyamrao Killedar (PW No.2) stated that, on 24th November 1999 he was attached to Local Crime Branch, Thane. He joined the Police party of seven persons organized under Mr. Juvekar. They went to Kashimira village and halted near the bus stop. He was asked to watch two persons who are likely to come with the stamps. Two persons came from Dahisar side. Both of them were holding a bag with contents. They were apprehended. Bags were opened in the presence of panchas. Stamp in denominations of Rs. 2/-, 5/- and 10/- were found with them. They were seized by drawing panchnama. He identified the stamps under exhibits-21 and 22. In cross-examination, it was stated that it did not appear from their movements that the accused No.1 were waiting to board the vehicles. Panchas were called before apprehension of accused. The stamps were in the bags but same bags are not now before the Court. The articles, stamps, bundles and bags were seized from accused No.1. In cross-examination, he

stated that he had not told the police as to which hand, the accused No.1 was holding the bag.

10. Rajendra Juvekar (PW No.3) deposed that, he was attached to Thane Rural Crime Branch. He was on night petrolling duty alongwith his staff. At about 01:30 a.m., in the night of 24th November 1999, information was received that two persons carrying fake stamps were likely to appear at Kashimira Naka. Trap was arranged with panch witnesses by 11.30 a.m. on next morning. It continued upto 02.15 p.m. two persons carrying bags were going towards Mira Road. Accused No.1 was the same persons. Informer was with the police. Both the accused found carrying fake stamps. Accused No.1 was carrying stamps of Rs. 7,40,000/-. Accused No. 2 was in possession of stamps of Rs. 8,40,000/-. They were in sheets. Articles 21 and 22 are the same. Accused were arrested. Complaint was lodged. He discovered the name of third accused during interrogation and located the place where he was likely to be. Accused No.3 was apprehended at Mira Road Naka by staff. Mr. Killekar and Mr. Ingavale brought accused No.3 to his office. He was arrested in the morning. He was interrogated. He offered to recover the artciles about the manufacture of false stamps and disclosed that the same are kept in his house at Kandivali. He took the police to his

house at Kandivali. Memorandum Exh.27 was prepared. There were share transfer stamps worth Rs. 2/-, 5/-, 10/- and 50/- denominations and postal stamps of Rs. 10/-. All were fake. Equipment machines, perforating machine, gum were found. They were seized vide panchnama exhibit-28. The value of the stamps was Rs. 2 crore 26 kakhs. Machine was valued Rs. 25,000/-. He identified the accused and the articles. In the cross-examination, he deposed that, Kashimira bus-stop is opposite to the police Station. Information was received on the previous night while they were patrolling. Information was received at 01.30 a.m. while they were at Mira Road. Police station are within range of two kms., from there. In the investigation it was revealed that accused No.1 had obtained the stamps from Mahesh Shah and Shirdhankar. The accused No.3 disclosed the name of Mahesh Shah and two persons with surname Shirdhankar. A bag found with accused No.1 was not separately labelled by signature of panch witnesses. There is no separate labelling with signature of panchas on the bag found with accused No.2. Accused No.3 was apprehended by Vishnu Killekar and Sanjay. Panchnama of arrest was made. He do not remember what was found on his person. He did not try to collect documentary evidence to ascertain the residence of accused No.3. He did not record statement of neighbours. There was no lock to the premises. The house was located in chawl. The property recovered was transported by tempo vehicle. He did not record the statement of owner of tempo. The entire property was taken to crime Branch. The articles were transported in small truck.

11. Kisan Namdev (PW No.4) was called at Rural Police Station. On 28th November 1999 one person was shown to him. His name was Mukesh Mashrur. The said person did not say anything in his presence. He was asked to sit outside. Nothing happened in his presence. The said person brought outside. He was made to sit in the jeep. They were taken by jeep to Bhayandar. Jeep haulted. He was waiting in jeep. They came back. Something was wrapped in cloth in the hand of Mukesh. All came back to Crime Branch. No writing executed at Bhayandar. His signature was not taken there. The document was already written. The contents of panchnama that the documents were recovered in his presence are not correct. There was no recovery and sealing of property in his presence.

12. Abdul Gafar Shaikh (PW No.5) deposed that, Police officer contacted him and asked him to act as panch. Two persons came there, each one was carrying polythene bag and gunny bag. The bags were containing counterfeit stamps. Accused No.3 gave information to the police and disclosed that he has material kept in his house. They went to Kandivali in a

jeep. They went to the room. One woman was sitting outside and the door was simply closed from outside. The Officers gave her identification and entered the flat. The quantity was larger. In cross-examination, he stated that, the accused came from Bhayandar side. The writing work was conducted at Kashimiara Police Station. The articles were transported from the place in a tempo.

13. Raman Sakharam (PW No.6) is Investigating Officer. He deposed that he took up investigation in the present case. He received papers including the complaint. On 28th November, 1999, he interrogated Accused No.1 – Mukesh. He disclosed that stamps were collected from accused No.3. He took them to Bhayandar. Stamps were recovered from him. On 11th December 2000, the seized articles were sent to Nashik for scientific examination vide exhibit 27. He sent charge sheet against three accused. In cross, he deposed that, the cabinet from which the stamps were taken from accused No.1 were not seized. Memorandum was made at Local Crime Branch Office and panchnama was made at the spot. He did not record the statement of neighbours.

14. On scrutinizing the evidence on record, it is evident that, information was received by the police that persons carrying counterfeit

stamps are likely to come at Kashimira Naka for selling the counterfeit stamps. Trap was arranged. The police, panch and secret informant waited at Kashimira Naka from 11:30 a.m. Two persons arrived at about 02:15 p.m. they were carrying bags with them. They were proceeding towards Mira Road. The informant pointed them as persons referred by him. Both the persons were apprehended. They gave their names as Mukesh Mashrur and Dinanath Patil. On search they were found in possession of fake stamps, which are used for share certificate. They were arrested immediately. Panchnama Exh.25 was recorded from 14:20 hrs. to 15:45 hrs. Complaint was lodged with Kashimira Police Station vide C.R. No.I-10 of 1999. On 24th November 1999 for offences under Sections 255, 258, 259, 260, 263-A, 465, 34 of Indian Penal Code it is marked at Exh.26. It is further alleged that, involvement of the accused No.3 was disclosed. He was arrested on 25th November 1999. Memorandum statement of accused/appellant was recorded. He disclosed that he is willing to show the place where he kept counterfeit stamps and the equipments. The panch and police then proceeded to the place shown by the appellant and stock of counterfeit stamps were recovered from the premises shown by him. The panchnama is marked at Exh.27 and 28.

15. Navnath Kavde (PW No.1) was patrolling with PW No.3-Juvekar, according to him accused No.1 and accused No.2 were apprehended on 24th November 1999. The trap was arranged under the supervision of PW No.3-Juvekar. PW No.2 was attached to Local Crime Branch, Thane, he was part of raiding party. PW No.3- Juvekar is PSI attached to Thane Rural Crime Branch. In the night of 24th November, 1999, he received information at about 01:30 a.m. that, two persons carrying fake stamps were likely to appear at Kashimira Naka. In his presence accused No.1 was apprehended. According to him name of accused No.3 was disclosed during investigation. He was arrested at Mira Road by his staff. PW No.2 and Mr. Ingavale brought him to Police Station. He was arrested. He was interrogated. According to PW No.3 the aforesaid articles were recovered from accused No.3. The arrest panchnama of accused No.3 is not on record. Although, PW No.3 had mentioned that the accused No.3 was arrested by his staff at Mira Road Naka and brought to Crime Branch by PW No.2. The evidence of PW No.2 do not refer to arrest of accused No.3 (appellant). PW No.4 is the panch witness. According to him accused No.1 lead the police and panchas for recovery of counterfeit stamps from his residence. Stamps worth Rs. 70,000/- were recovered from his house. PW No.5 Abdul Shaikh is the panch witness for arrest of accused No.1 and

accused No.2 and recovery of stamps from accused No.3. PW No.6 conducted investigation.

16 The prosecution has relied upon the testimony of the witnesses and documents on record. Indeed there are some discrepancies in prosecution case. Although, PW No.3 has stated that appellant was arrested by staff, more particularly by PW No.2 and Ingawale, there is no supporting evidence. PW No.2 Killedar is silent in that regard and Ingawale was not before Court. Arrest panchanama if any was not adduced in evidence. It is the case of the prosecution that the report was called from the Deputy Controller of Stamp Indian Security Press, Nashik with regard to the fake stamps recovered at the instance of the accused vide letter dated 10th December 1999 at Exh.29. The report indicated that the stamps were fake. The report is part of record and proceedings. However, the investigation officer or any other witness has not adduced it in evidence. It is not exhibited.

17 The accused No.1 and accused No.2 are not before this Court. Learned Advocate for the appellant had submitted that the said accused have undergone sentence and did not prefer appeal against conviction. The Trial Court has observed that the appellant was found in possession of

counterfeit stamps as well as the equipment made in preparing counterfeit. It was further observed that, after analyzing evidence it emerges that the accused were found in possession of counterfeit stamps. The prosecution has not been able to picturise the actual process of manufacturing the Government Stamps through regular plant by fitting raw material mostly the paper of the requisite quality and form. The trial Court has also opined that the scrutiny and evaluation of evidence shows that all the three accused were found in possession of counterfeit Government Stamps and certain devises. The accused No.3 found keeping huge stock and giving the finishing touches to the end product by using the perforating machine. During the investigation names of two persons had appeared but they could not be traced. This has lead to presenting the case that of mere possession of the contraband and instruments used in processing but not manufacturing plant. The set of charges levelled against all the accused need to be pruned down in as much as there is no proof of actual counterfeiting, manufacturing the first product. It is further observed that, the prosecution has proved under Sections 256 and 259 of IPC. The charge of forgery was embedded in the offence held to be proved against the accused.

18 Learned counsel for the appellant made several submissions

which are reproduced herein above. Learned APP has countered the submissions of the appellant. On analyzing the evidences, I do not find that the trial Court has committed error in convicting the appellant for the offence under Sections 256 and 259 of IPC. There are some discrepancies in the evidence of witnesses. As referred hereinabove. There is no serious challenge through cross examination to arrest and recovery. Panchas were common. There is nothing on record to disbelieve evidence of PW No.5, panch for recovery at the instance of appellant. It is not the case of accused that stamps were genuine. The core of evidence has not been demolished by the defence. After the arrest of accused No.1 and accused No.2 who were found in possession of counterfeit stamps, the involvement of the appellant was disclosed. There is recovery of counterfeit stamps from the premises at the instance of the appellant. The recovery has been proved. It was the submission of the learned counsel for the applicant that there is nothing on record to show the appellant is owner of the premises. The trial Court has rightly observed that, the title of the properties from where the counterfeit stamps and the equipment were recovered is immaterial. What is the important, if the discovery made by appellant accused reading to recovery of huge stamps. The Trial Court had acquitted the appellant for the charges under Sections 255, 257, 258, 260, 465, 420 of the Indian Penal Code.

19 The prosecution case is that, the appellant used to get the delivery of counterfeit stamps from the other persons who are named by him and that the same were stored in the premise from where they were recovered. It is also alleged that process of gumming and putting whole to the stamps was carried out at the said place. The Trial Court has observed that entire process of manufacturing has not been established. The accused from whom allegedly counterfeit stamps were procured by the appellant were not arrested. The accused No.1 and accused No.2 were allegedly arrested on 24th November 1999 and they were found in possession of counterfeit stamps. Subsequently, the recovery is made at the instance of the accused No.1 from his residence. The appellant was apprehended on 25th November 1999. Section 255 of IPC relates to counterfeiting Government Stamps. Section 257 provides punishment for making or selling instrument for counterfeiting Government Stamp. Section 258 punishes sale of counterfeit Government Stamp. Section 260 provides punishment for using as a genuine Government Stamps known to be counterfeit. Section 465 of IPC provides punishment for forgery and section 420 related to offence of cheating. The appellant has been acquitted for all these offences. The appellant is convicted for offence under Section 256 and 259 of IPC. Section 256 provides punishment for having possession of instrument and material

for counterfeiting Government Stamps and Section 259 of IPC provides punishment for having possession of counterfeit Government Stamps. Thus, the appellant has been convicted for the aforesaid offences and acquitted in the charge of counterfeiting Government Stamps, sale of counterfeit Government Stamps, making or selling instruments for counterfeiting Government stamps and using at genuineness of government stamps none to be counterfeiting.

20 The accused No.1 and accused No.2 were convicted for the offence under Section 259 of IPC. The appellant is also convicted for the same offence. The accused No.1 was sentenced to undergo imprisonment for two years and the accused No.2 was sentenced to undergo imprisonment which is already undergone as under trial prisoner. Learned advocate for the appellant submitted that both these accused have undergone the sentence. It is contended that the appellant was sentenced to imprisonment for five years while convicting him for the offence under Section 259 of IPC. It is submitted that there was common charge against all the accused and different punishment ought not to have been provided. The appellant is also convicted for the offence under Section 256 of IPC and sentenced to imprisonment for five years. It appears that, the accused No.1 was released on bail during the pendency of trial on 07th June 2000. The accused No.2

was released on 09th May 2000. The record however indicate that accused No.1 was arrested on warrant as he was not remaining present before the trial Court on 10th February 2003. The appellant is arrested on 25th November 1999. The appellant was actually released on bail on 09th May 2000. On the date of the Judgment convicting him, he was taken into custody. He was granted bail by this Court by suspending the sentence by order dated 30th April 2003. Learned advocate for the appellant had submitted that the appellant is aged more than 60 years in the event of Court convict him, he may not be sent to jail again. The accused No.2 was sentenced to imprisonment which had undergone by him. The appellant may be provided similar punishment. The appellant was convicted for having in possession of counterfeit stamps and certain equipment. He is acquitted for other charges. The incident was committed on 24th November 1999. The appellant was on bail during the trial. It appears that, he was in custody for a period of 6 months & 18 days. The conviction of the appellant for offence under Sections 256, 259 deserves to be confirmed. However, considering the factual aspect as stated above sentenced to imprisonment can be reduced to the period which has undergone by him concurrently for both the charges.

O R D E R

(i) Criminal Appeal No.511 of 2003, is partly allowed.

(ii) The conviction for the offence under Section 256 of IPC and 259 of IPC is confirmed. However on both counts the appellant is sentenced to undergo imprisonment for the period which has undergone in custody with the benefit of set off.

(PRAKASH D. NAIK, J.)