

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-S-2227 of 2019 (O&M)

Date of Decision: February 03, 2020.

Vikram Sehgal @ Vicky

.....Appellant

versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR.JUSTICE VIVEK PURI.

Present: Mr.Rohiteshwar Singh, Advocate, for the appellant.

Mr.Rajesh Bhardwaj, Senior DAG, Punjab.

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Vivek Puri, J.

The present appeal has been preferred against the judgment of conviction and order of sentence dated 16.07.2019 passed by the Court of learned Additional Sessions Judge, Jalandhar, vide which the appellant has been convicted under Section 489-C of IPC and sentenced as under:-

Under Section : To undergo rigorous imprisonment for
489-C of IPC one year and to pay fine of Rs.3000/-
and in default of payment of fine to
further undergo rigorous imprisonment
for one month.

Briefly, the case has been registered on the allegation that on 24.10.2016, ASI Sukhraj Singh, alongwith fellow police officials was present at Kishanpura Chowk, Jalandhar in connection with patrolling duty where he received secret information to the effect that appellant was present at Doaba Chowk and was in possession of counterfeit currency notes in the denomination of Rs.100/- each and further he was about to use those counterfeit currency notes. It is further alleged that if raid is conducted, the

appellant can be apprehended with the counterfeit currency notes. Relying

upon the said information, ruqa was recorded and sent to the police station through HC Malkit Singh, on the basis whereof present FIR was registered. Raid was conducted at the disclosed place and the appellant was apprehended. During the course of search, 30 counterfeit currency notes of the denomination of Rs.100/- each were recovered from the right pocket of his pant, which were seized vide separate recovery memo. The personal search of the appellant was conducted and on reaching the police station, the case property was deposited with the MHC. On the receipt of report from the Government Press, Nashik and on completion of the investigation, the challan was presented before the learned Illaqa Magistrate against the appellant.

After complying with the provisions of Section 207 Cr.P.C., the case was committed to the Court of Sessions as the case was exclusively triable by the Court of Sessions.

Prima-facie, the offences under Sections 489-B and 489-C were made out against the appellant. Accordingly, the charge was framed to which he pleaded not guilty and claimed trial. To substantiate the case, the prosecution has examined seven witnesses, namely, PW-1 HC Kuldeep Singh, PW-2 ASI Sukhraj Singh, PW-3 HC Sanjeev Kumar, PW-4 ASI Ranjit Singh, PW-5 HC Raghubir Kumar, PW-6 HC Harjit Singh and PW-7 S.K.Ghosh. The statement of the appellant under Section 313 Cr.P.C. was recorded wherein he has denied the correctness of the incriminating evidence and pleaded not guilty. The appellant has examined DW-1 Anita Sehgal during the course of his defence evidence.

Vide impugned judgment of conviction and order of sentence, the appellant was convicted and sentenced as mentioned above. However,

he was acquitted with regard to the offence under Section 489-B IPC.

Aggrieved by the aforesaid judgment and order, the appellant has preferred the present appeal.

I have heard learned counsel for the parties and perused the record.

It has been contended by learned counsel for the appellant that the raid was conducted in pursuance to the secret information, recovery was effected from a very busy area in the evening hours and the site plan exhibit PW-2\F depicts that there are many shops located near the place of recovery, but no public witness has been joined by the police party which renders the version of the prosecution to be doubtful. The description of the appellant by physical appearance has not been specified by the secret informer and there is nothing to suggest as to how the police party pin pointed the appellant at the time of raid. By placing reliance on the decision of the Supreme Court reported as Umashanker versus State of Chattisgarh, 2001 (4) R.C.R. (Criminal) 444, it has been argued that there is lack of material to indicate any *mens rea* on the part of the appellant. The arresting officer also conducted the investigation which vitiates the proceedings. No offer of search was given by ASI Sukhraj Singh PW-2 before conducting the search of the appellant. No certificate under Section 65-B of the Indian Evidence Act has been proved on record. PW-7 S.K.Ghosh cannot be termed to be expert to distinguish the counterfeit currency notes as no notification authorizing him to give report about the genuineness of the currency notes has been proved on record. Lastly, it has been argued that there is discrepancy in the statements of the witnesses and as a cumulative effect, the case of the prosecution cannot be termed to be free from the

reasonable doubt.

On the contrary, learned State counsel has argued that there is no bar to base the conviction on the basis of statements of the police officials only. Furthermore, the name of the appellant was specified in the secret information which was sufficient to fix his identity at the time of conducting the raid. Thirty counterfeit currency notes have been recovered from the possession of the appellant which is indicative of the fact that he was conscious of the fact that the same are counterfeit currency notes and *mens rea* on his part to commit the offence is evident on record. There is no bar for the arresting officer to conduct the investigation and there is nothing to suggest that any prejudice has been caused to the appellant on that score. There is no provision of law to offer search by the police officer who conducted the search before conducting the search of the appellant. The provisions of Section 65 B of the Indian Evidence Act pertain to the admissibility of electronic record and no such record has been proved in the instant case. PW-7 S.K.Ghosh is working as Deputy Manager in the Currency Note Press, Nashik and his working experience is nine years and he has acquired sufficient expertise to give opinion with regard to the counterfeit currency notes. Furthermore, the discrepancies are insignificant and the same are quite natural when the statements of the witnesses are recorded after a time gap.

It is no doubt true that recovery has been effected in pursuance of the secret information and no independent witness has been joined at the time of recovery but the deposition of the official witnesses cannot be viewed with distrust and suspicion merely because of their official status, unless and until there are cogent grounds. There is no provision of law

which requires presence of an independent witness at the time of search of a suspect and recovery proceedings cannot be discarded on the score that no independent witness was opted to be joined by the police party. The deposition of the official witnesses has to be evaluated in the same manner as that of other witnesses. It may be mentioned here that it is a matter of common observation that there is general reluctance on the part of the people to join investigation and to depose against the accused to avoid enmity. There can be variety of reasons as to why the witness is not interested to come forward and depose against the accused. Moreover, had much time been utilized in joining public witness, it would have provided an opportunity to the appellant to slip away. At the best, it will be a circumstance which will cause stringent duty of the Court to scrutinize the evidence with more care and caution.

On adverting to the merits of the present case, the case of the prosecution mainly hinges on the deposition of PW-2 ASI Sukhraj who conducted the search and effected the recovery of thirty counterfeit currency notes from the appellant in the presence of PW-3 HC Sanjeev Kumar and PW-6 HC Harjit Singh. The counterfeit currency notes recovered from the possession of the appellant have been taken into possession by the police party vide recovery memo exhibit PW-2/C. The officer who has effected the recovery and the witnesses to the recovery have deposed against the appellant in a fairly consistent and satisfactory manner. It is no doubt true that description of the appellant by physical appearance was not mentioned by the secret informer but it is emerging in the statement of PW-2 ASI Sukhraj Singh that the name, parentage and residential address of the appellant was mentioned and even his location at Doaba Chowk was

also specified in the secret information. In such circumstance, the police party could conveniently identify the appellant at the time of conducting the raid.

The argument raised on behalf of the appellant is to the effect that there is lack of proof of *mens rea* as there is nothing on record that the appellant was in knowledge or there is reason to believe that the currency notes are counterfeit currency notes. The ratio of decision in Umashanker's case (supra) relied upon on behalf of the appellant is distinguishable from the facts of the present case. In the said decision, the accused was 18 years' old student and no specific question was asked to him during his examination under Section 313 Cr.P.C., with regard to the possession of fake and counterfeit currency notes. However, in the instant case, a specific question has been put to the appellant in his statement under Section 313 Cr.P.C., with regard to possession of counterfeit currency notes and he has denied the said allegation.

Furthermore, as per the provisions of Section 489-C IPC, the possession of counterfeit currency notes is an offence in the circumstance that the accused knew or had the reason to believe that the same are counterfeit currency notes and he intended to use the same as genuine. This aspect of the case has to be inferred from the circumstances brought on record. In his statement under Section 313 Cr.P.C., the appellant has denied the fact of recovery of counterfeit currency notes. It is not the case of the appellant that he innocently came in possession of counterfeit currency notes. In the instant case, thirty counterfeit currency notes have been recovered from the possession of the appellant. Besides, it is emerging in the statement of PW-2 ASI Sukhraj Singh that on seeing the police party,

the appellant has tried to turn away. It is evident of the fact that the appellant was conscious of the fact that he was carrying counterfeit currency notes and on seeing the police party, he made an attempt to escape. The conduct of the appellant is indicative of the fact that he was having knowledge that he was carrying counterfeit currency notes and had intended to use the same as genuine.

The recovery has been effected by PW-2 ASI Sukhraj Singh and during his cross-examination, he has also testified to the effect that further investigation was conducted by him. In the instant case, merely because the officer who conducted the search and has investigated the case cannot be termed to be a circumstance to discard the version of the prosecution particularly because there is nothing to suggest that any prejudice has been caused to the appellant on that score.

No offer to search by PW-2 ASI Sukhraj Singh was given to the appellant before his search. However, no provision of law has been referred to in this regard. Moreover, it is not the case of the appellant that PW-2 ASI Sukhraj Singh was carrying counterfeit currency notes and the same have been falsely planted upon him by the Investigating Officer. Even PW-2 ASI Sukhraj Singh has not been cross-examined on the aspect that he has not given any offer to the appellant to conduct his search prior to conducting his search.

The argument raised on behalf of the appellant to the effect that no certificate under Section 65 B of the Indian Evidence Act has been proved on record, is liable to be rejected on the score that in the instant case, no electronic record has been sought to be proved.

The prosecution has sought to place reliance on the report

exhibit PW-5/B of PW-7 S.K.Ghose who is working as Deputy Manager in the Currency Note Press, Nashik. As per the report, suspected currency notes of 100 denomination each were found counterfeit currency notes. There is no requirement to produce any notification issued by the Central Government in his favour to designate him to give report regarding genuineness of the currency notes. It is also emerging in the statement of PW-7 S.K.Ghosh that he has the experience of nine years with regard to examination of genuineness of the currency notes. As such, it is evident that PW-7 S.K.Ghosh has acquired sufficient expertise and experience to make distinction and is competent to give his opinion with regard to the counterfeit currency notes. Furthermore, there cannot be any dispute with regard to the fact that the currency notes recovered from the possession of the appellant were counterfeit currency notes. The recovery memo exhibit PW-2/C indicates that three notes were bearing No.4BK 973112, four notes were bearing No. 8PH 181746, three notes were bearing No.7 MG 624753, six notes were bearing No.9 MK 711930, five notes were having bearing No.6 FS 154230, four notes were having bearing No.ONL 008517 and five notes were having bearing No.OMI 187359. As such, the same distinctive number was appearing on different currency notes which makes it amply clear that the recovered notes were counterfeit currency notes.

Learned counsel for the appellant has pointed out discrepancies in the statements of the witnesses. It has been pointed out that PW-2 ASI Sukhraj Singh has deposed to the effect that no independent witness was called, whereas other two witnesses have deposed that effort was made to join the independent witness. It has been further argued that description of the appellant by physical appearance was not disclosed to PW-2 ASI

Sukhraj Singh, but PW-6 HC Harjit Singh has testified to the effect that the investigating officer had told the police party regarding physical appearance of the suspect person. The discrepancies pointed out by learned counsel for the appellant are inconsequential and do not in any manner render the version of the prosecution to be doubtful. A few minor discrepancies bound to appear in the statements of the witnesses due to lapse of time. A person is not expected to remember even minute facts with mathematical certainty after a lapse of time.

The appellant has examined his mother Anita Sehgal as DW-1 who has testified that on 22.10.2016, the appellant, who was present in his house, was taken by the police officials in plain clothes. She alongwith her husband and neighbours had gone to the police station during night and the police officials told her that the appellant shall be released after inquiry on the following day, but the appellant was not released and on 25.10.2016, she came to know that her son has been falsely implicated in this case. In this regard, it may be mentioned here that DW-1 Anita Sehgal had never made any complaint in writing to any superior police officer or to any forum alleging false implication of her son. She remained silent and furthermore in his statement recorded under Section 313 Cr.P.C., the appellant has not sought to put-forth any such defence version. In such circumstance, it has to be concluded that the defence version is sought to be put-forth in the statement of DW-1 Anita Sehgal as a result of after-thought and is liable to be rejected.

In the case in hand, the recovery has been effected by PW-2 ASI Sukhraj Singh in the presence of PW-3 HC Sanjeev Kumar and PW-6 HC Harjit Singh. All the witnesses to the recovery have deposed in fairly

satisfactory manner with regard to the sequence of events leading to the recovery of counterfeit currency notes from the possession of the appellant. The deposition of the witnesses is fairly reliable and form a valid ground for conviction of the appellant. The deposition of the witnesses to recovery proves and establishes the material fact of recovery of incriminating articles from the conscious possession of the appellant. Once the material fact of recovery of incriminating articles from the conscious possession of the appellant is proved and established by satisfactory and reliable evidence, the inconsequential infirmities and unimportant flaws in the case of prosecution tend to pale into insignificance.

In this set of circumstance, the judgment of conviction has been correctly recorded by the trial Court on the basis of satisfactory and reliable evidence establishing the guilt of the appellant is proved beyond the shadow of any reasonable doubt.

Lastly, it has been pointed out on behalf of the appellant that he is having old parents and he is the only bread winner of the family and has no criminal background and accordingly, leniency in the matter of sentence has been sought. In this regard, it may be mentioned here that use of counterfeit currency notes is an offence which disturbs the economic fabric of the country and is liable to be dealt with sternly. Moreover, the trial Court has already taken lenient view in the matter of sentence which does not call for any interference.

In these circumstances, the judgment of conviction and order of sentence passed by the trial Court do not call for any interference by this Court and are upheld.

For the aforesaid reasons, the appeal being devoid of any merit is dismissed.

February 03, 2020
mohinder

(VIVEK PURI)
JUDGE

Whether speaking/reasoned

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Yes/No

Whether Reportable

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Yes/No