

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 199 / 2016

1. Karim Abdul Shaikh

Age-21 years, Occ- Labourer,

Permanent Address :

Village-Madhyam Piyarpur,

P.O. Piyarpur, P.S.-Piyarpur,

Dist-Sahibganj, Jharkhand State

PIN-816108

(Presently lodged at Mumbai
Central Prison)

2. Rahul Ayodyaprasad Gupta

Age-27 Yrs, Occ-Service,

Permanent Address :

R/o. Room No.106, Makkawadi,

Adjacent to Panchvati Bakery,

Dukkar Gulley, Sardar Nagar

No.3, Sion Koliwada,

Mumbai-400 037

.....Appellants

V/s.

The State of Maharashtra

(At the instance of Sr.P.I. of
Kanjurmarg Police Station vide
C.R. No. 92/2013)

....Respondent

WITH
INTERIM APPLICATION NO. 17 / 2019
(for separation of the Appeal)
IN
CRIMINAL APPEAL NO. 199 OF 2016

Rahul Ayodyaprasad Gupta

Age-27 Yrs, Occ-Service,

Permanent Address :

R/o. Room No.106, Makkawadi,

Adjacent to Panchvati Bakery,

Dukkar Gulley, Sardar Nagar

No.3, Sion Koliwada,

Mumbai-400 037

....Applicant

(Orig.Accd. no.2)

V/s.

The State of Maharashtra

(At the instance of Sr.P.I. of
Kanjurmarg Police Station vide
C.R. No. 92/2013)

.....Respondent

(Orig. Complainant)

* * * *

Mr. Pawan Mali Advocate appointed alongwith Mr.
Nagesh Chavan, for the appellant.
Mr. S.R. Agarkar, APP for State.

CORAM : SANDEEP K. SHINDE, J.

Monday, 8th February, 2021.

JUDGMENT :

1. The appellants-original accused nos.1 and 2 have questioned the correctness of judgment and order dated 26th February, 2016 passed by the learned Additional Sessions Judge, Greater Bombay in Sessions Case No.872/2013.

2. Accused no.1, Karim Abdul Shaikh is convicted of the offence punishable under Section 489-B of the Indian Penal Code and sentenced, him to suffer rigorous imprisonment for 5 years and pay fine of Rs.2,000/- with default stipulation. He has been also convicted of the offence punishable under Section 489-C of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for 3 years and fine

of Rs.3,000/- with default stipulation. However, both the sentences were directed to run concurrently.

3. Accused no.2-Rahul Gupta has been convicted for the offence punishable under Section Section 489-C of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 3 years and fine of Rs.2,000/- with default stipulation.

4. Pending trial, accused no.2-Mohammad Pintu Shaikh, passed away and therefore the case abates against him.

5. Pending trial, accused no.4, as it appears was discharged by the learned trial Court.

6. Prosecution's case in brief is that, on 24th June, 2013, accused no.1-Karim Shaikh approached the first informant shop and asked for three cakes of bathsoap costing Rs.132/-. After taking the soaps, accused handed note of Rs.1,000/- denomination to the first informant. The first informant returned the balance amount of Rs.868/- to accused no.1. However, while he was leaving, the first informant suspected the

genuineness of that currency note. He therefore called the accused and told him that the currency note delivered to him was 'fake'. Thereupon, the accused Karim Shaikh returned him back the soap cake and demanded his currency note of Rs.1,000/- denomination. However, the first informant declined to return the note to him. In the circumstances, the accused tried to run away. The first informant-shopkeeper called the policemen and narrated the incident to them. In the meanwhile, accused no.1 was detained. On his personal search, currency notes of Rs.1,000/- denomination, four currency notes of Rs.500/- denomination were found in his shirt pocket. The counterfeit currency notes were seized by drawing the panchanama followed by registration of crime for the offence punishable under Section 489-B and 489-C. In the course of investigation, 130 fake currency notes of Rs.500/- denomination were seized from the house of accused-Karim Shaikh as per the disclosure statement. That on the information revealed by accused no.1, the Investigating Officer arrested Rahul Gupta (accused no.2) and seized 85 currency notes of Rs.1,000/- denomination from his house as per his disclosure statement. All fake and genuine

currency notes were sent to Currency Note Press, Nasik and the report was called.

7. Upon perusing the final report, accused were tried for the offences punishable under Sections 489-B and 489-C of the Indian Penal Code. In consideration of evidence, the learned trial Court, convicted accused nos.1 and 2 as aforesaid, against which this appeal is preferred.

8. Heard Mr. Mali, learned Advocate appointed by this Court, Advocate Mr. Chavan for the appellant and learned APP for the State.

9. I have perused the prosecution evidence.

10. Before adverting to the arguments/contentions, of Mr. Mali, Learned Advocate for the appellant, it may be stated that, accused no.1 who was convicted for the offences punishable under Section 489-B and 489-C and sentenced to suffer 5 years and 3 years respectively, has undergone the sentences of five years; whereas, accused no.2 convicted for the offence punishable under Section

489-C and sentenced to suffer 3 years, was enlarged on bail pending Appeal.

11. Mr. Mali, learned Counsel for the appellants, submitted, that report from the Currency Note Press at Exhibit-79, being admissible in evidence in terms of Section 292 of the Code of Criminal Procedure, 1973 and the learned trial Court founded its conviction on this report, however, the report being of incriminating material, explanation in respect thereof was not sought from the accused, while they were examined under Section 313 of the Criminal Procedure Code, the report of Currency Note Press was required to be kept out of consideration and the trial Court could not have founded conviction under Section 489-B and 489-C. In support of this contention, Mr. Mali has taken me through the statement recorded under Section 313 of the Criminal Procedure Code and further relied on the judgment of the Apex Court in the case of **Sujit Biswas Versus. State of Assam, (2013) 12 Supreme Court Cases 406**. In para-20, the Hon'ble Supreme Court has held thus :

12. It is a settled legal proposition that in a criminal trial, the purpose of examining the

accused person under Section 313 Cr.P.C., is to meet the requirement of the principles of natural justice, i.e. audi alterum partem. This means that the accused may be asked to furnish some explanation as regards the incriminating circumstances associated with him, and the court must take note of such explanation. In a case of circumstantial evidence, the same is essential to decide whether or not the chain of circumstances is complete. No matter how weak the evidence of the prosecution may be, it is the duty of the court to examine the accused, and to seek his explanation as regards the incriminating material that has surfaced against him. The circumstances which are not put to the accused in his examination under Section 313 Cr.P.C., cannot be used against him and must be excluded from consideration. The said statement cannot be treated as evidence within the meaning of Section 3 of the Evidence Act, as the accused cannot be cross-examined with reference to such statement.”

12. Mr. Agarkar, fairly admits that, no explanation was sought from the accused in respect of Exhibit-79, a Currency Note Press Report, while examining them under Section 313 of the Criminal Procedure Code.

13. Thus, in view of the facts aforesaid, and in view of the law laid down by the Apex Court in the case of *Sujit Biswas* (supra), which was followed by the Division Bench of this Court in the case of **Kiran Ashok Jadhav Vs. The State of Maharashtra, through Goregaon Police Station, 2014 ALL. M.R. (Cri.) 3850**, it is to be held that, the report at Exhibit-79 was required to be excluded from consideration. In other words, the trial Court could not have relied on this report and convicted the accused for the offence punishable under Section 489-B and 489-C of the Indian Penal Code.

14. Mr. Mali, has invited my attention to the opinion report of Currency Note Press, Nasik (Exhibit-79) and drew my attention to examination details. Submission is that, on examination of counterfeit notes, experts noticed length and width of the notes; and colour registration was correct, Besides, the paper thickness was found same, as that of genuine note

paper. Mr. Mali, relying on these examination details, would submit that, neither the appellants nor any person could have distinguished the subject notes being counterfeit and it was only on the careful scrutiny by experts like, manager of currency notes, the notes were found, fake. It is therefore submitted, since resemblance of fake note to genuine note was not discernible with naked eye, the prosecution ought to have established, that the possession was with the knowledge that the currency notes were fake or counterfeit. It is submitted that, *mensrea* is an essential ingredient of Section 489-B and the expression “knowing or having reason to believe the same to be forged or counterfeit” is *sine-qua-non* for inviting penalty under the said provision. In support of his contention, Mr. Mali has relied on the judgment of the Hon’ble Apex Court in the case of **M. Mammutti V/s. The State of Karnataka, reported in (1979) 4 SCC 723**. Reliance is also placed on the judgment of the Division Bench of this Court in Writ Petition No. 3027 of 2018 dated 1st October, 2018 (**Sanskriti Jayantilal Salia V/s. The State of Maharashtra & Ors.**). Further reliance has also been placed on the judgment of the Apex Court in the case of **Umashanker Versus. State of Chattisgarh, reported in 2001 (9) SCC 642**.

15. I have carefully considered the submissions of the learned Counsel for the appellant and the submissions of the learned APP for the State. I have also gone through the judgment cited by the Counsel for the appellants.

16. It is not in dispute that, the currency notes allegedly recovered from the accused has had resemblance to genuine note on the aspects of size and length; paper thickness and registration. Therefore, the currency notes recovered from the accused were strikingly similar to genuine notes. It is in these circumstances, it was difficult not only for the appellants but for any person to distinguish the note from counterfeit. In the given set of facts, the prosecution ought to have established the *Mens rea*. On this point, the Apex Court in the case of *Umashanker* (supra) has held in para-8 as under :

“8. A perusal of the provisions, extracted above, shows that mens rea of offences under Section 489-B and 489-C is, "knowing or having reason to believe the currency-notes or bank notes to be forged or counterfeit". Without the

afore-mentioned mens rea selling, buying or receiving from another person or otherwise trafficking in or using as genuine forged or counterfeit currency-notes or bank-notes, is not enough to constitute offence under [Section 489-B](#) of I.P.C. So also possessing or even intending to use any forged or counterfeit currency-notes or bank-notes is not sufficient to make out a case under [Section 489-C](#) in the absence of the mens rea, noted above. No material is brought on record by the prosecution to show that the appellant had the requisite mens rea. The High Court, however, completely missed this aspect. The learned trial judge on the basis of the evidence of P.W.2, P.W.4 and P.W. 7 that they were able to make out that currency note alleged to have been given to P.W. 4, was fake "presumed" such a mens rea. On the date of the incident the appellant was said to be 18 year old student. On the facts of this case the Presumption drawn by the trial court is not warranted under [Section 4](#) of the Evidence Act. Further it is also not shown that any specific question with regard to the currency-notes being

fake or counterfeit was put to the appellant in his examination under Section 313 of Criminal Procedure Code. On these facts we have no option but to hold that the charges framed under Sections 489-B and 489-C are not proved. We, therefore, set aside the conviction and sentence passed on the appellant under Sections 489-B and 489-C of I.P.C. and acquit him of the said charged [see : M. Mammutti v. State of Karnataka, AIR (1979) SC 1705.”

17. Thus, it is to be held in the case in hand, the prosecution has not established that the possession of currency notes was with the knowledge or that accused had every reason to believe that the currency notes were forged or counterfeit. In the circumstances, without the *Mens rea*, selling, buying or receiving from other person or using it as a genuine is not enough to constitute the offence under Section 489-B of the Indian Penal Code.

18. Thus, in consideration of the facts of the case and the law laid down by the Apex Court, in my view, the learned trial Court at first, ought not to have relied

on the report of the printing press when explanation in respect and in relation thereto was not sought from the accused, they were examined under Section 313 of the Criminal Procedure Code and secondly there is no evidence on record even to suggest that the accused had the knowledge that the notes in their possession were counterfeit.

19. In consideration of the facts of the case and for the reasons stated, the Appeal is allowed and the judgment and order dated 26th February, 2016 passed by the learned Additional Sessions Judge, Greater Bombay in Sessions Case No.872/2013 is quashed and set aside. The Bail Bonds are cancelled and securities are discharged. The fine amount, if any, paid be refunded to the appellant-accused. Appeal is disposed off.

20. With disposal of the Appeal, interim applications do not survive. The same also stand disposed off.

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(Sandeep K. Shinde, J.)