

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 347

Criminal Appeal No.607 of 2006
Date of Decision: August 06, 2022

Shiv Chander Shah

..... APPELLANT(S)

VERSUS

State of Haryana

..... RESPONDENT(S)

. . .

CORAM: **HON'BLE MR. JUSTICE HARMINDER SINGH MADAAN**

. . .

PRESENT: - Mr. Jagtej Singh Kang, Advocate/ Legal-Aid counsel for
the appellant.

Mr. Viney Phogat, Deputy Advocate General, Haryana.

. . .

H.S. Madaan, J (Oral)

This appeal is directed against judgment dated 12.12.2005 passed by the Sessions Judge, Faridabad, vide which, on conclusion of trial in FIR No.189 dated 17.04.2005 for offences punishable under Sections 489-B and 489-C IPC, registered at Police Station, NIT, Faridabad, accused Shiv Chander Shah was convicted for the offences for which he was booked, and vide order of sentence passed on that very date, he was sentenced to undergo rigorous imprisonment for five years and to pay fine of ₹ 2000/-, in default of which, to undergo further rigorous imprisonment for six months for offence under Section 489-B IPC. He was also sentenced to undergo rigorous imprisonment for five years alongwith fine to the tune of ₹ 10,000/-

in default of which, to undergo further rigorous imprisonment for two years for offence under Section 489-C IPC. Both the sentences were ordered to run concurrently.

Briefly stated, the facts of the case as per prosecution version are that on 17.04.2005, accused Shiv Chander Shah was in the queue before ticket window at K.C. Cinema, Faridabad for the purpose of purchasing a ticket to see a movie there. At about 08:50 PM, when the turn of accused came, he demanded a balcony ticket of ₹ 18/- from Sukh Dayal booking clerk and gave a currency note of ₹ 500/- denomination through the window. Sukh Dayal issued the ticket to accused but while returning the balance amount to him, he suspected that the said currency note given to him by the accused was counterfeit. Sukh Dayal caught the hand of accused through the window and asked Kishan, another clerk sitting with him to apprehend the accused. Accordingly, Kishan went out and caught hold of the accused. When they were taking the accused to police, they came across a police party headed by SI Jagat Singh. Sukh Dayal gave an application Ex.PA to the police and handed over the accused to the police personnel. Counterfeit currency note bearing No.JAC317646 which had been given by the accused to Sukh Dayal was also submitted to the police. The Investigating Officer summoned a photographer and got the counterfeit currency note photographed from both the sides, and then, it was put into an envelope, preparing a sealed parcel thereof and taken into possession vide a recovery memo Ex.PB. Application of Sukh Dayal Ex.PA was endorsed vide Ex.PA/1 and sent to Police Station, NIT Faridabad, on the basis of which, formal FIR Ex.PA/z was recorded.

Search of the accused led to recovery of 25 more counterfeit currency notes of ₹ 500/- denomination bearing Nos.JAC 317256 and JAC 317280. These notes were also got photographed from both sides, placed in an envelope of which a sealed parcel was prepared, and it was taken vide seizure memo Ex.PC. Cinema ticket Ex.PD was also recovered from the possession of the accused. The accused, in police custody suffered a disclosure statement Ex.PE to the effect that he had kept concealed 40 counterfeit currency notes of ₹ 500/- denomination in a box kept in his residential house at his village Chhapakhia, District Malihari, Bihar and could get the same recovered. The accused was taken to Malihari, however at Railway Station, he made a disclosure statement Ex.PF to SI Ram Lubhave, on 23.04.2005 that his earlier statement was wrong and infact, the remaining 40 counterfeit currency notes have been kept in a polythene under the earth in the bushes towards east of K.C. Cinema, Faridabad and he could get the same recovered. He was brought back to Faridabad and on 26.04.2005, he led the police party to K.C. Cinema and got recovered 40 counterfeit currency notes of ₹ 500/- denomination by digging the earth under the bushes. These notes were also got photographed from both sides and seized vide memo Ex.PG. During the course of investigation, all the 66 counterfeit currency notes were sent to FSL, Madhuban and as per report Ex.PJ, those notes were opined to be counterfeit notes. On completion of investigation, report under Section 173 Cr.P.C. was presented in the court of competent jurisdiction.

Finding a prima facie case against the accused for commission of offences under Sections 489-B and 489-C IPC, he was chargesheeted, to which, he pleaded not guilty and claimed trial.

During the course of trial, prosecution examined 11 witnesses. PW-1, ASI Rohtas Singh deposed regarding recording of formal FIR Ex.PA/Z on receipt of application Ex.PA containing endorsement Ex.PA/1. PW-2, ASI Pritam Singh (photographer) stated that on 17.04.2005, he had clicked the photographs of 26 counterfeit currency notes. He proved the negatives as Ex.P1 to P52 and positive photographs Ex.P53 to P104. PW-3 Sukh Dayal and PW-4 Kishan supported the prosecution story on all material aspects. PW-5, ASI Suman Kumar and PW-10, SI Jagat Singh also supported the prosecution version stating that Sukh Dayal and Kishan had brought the accused before the police party headed by SI Jagat Singh and handed over the counterfeit currency note of ₹ 500/- and an application Ex.PA alongwith accused Shiv Chander Shah. PW-6 HC Badan Singh and PW-11 Ram Lubhaya also reiterated the prosecution case regarding going to Bihar pursuant to disclosure statement Ex.PE and returning back to Faridabad on another disclosure statement Ex.PF suffered by accused and getting recovered 40 counterfeit currency notes from the stated place. PW-7, C – Sandeep Kumar and PW-8, HC Suraj Bhan tendered into evidence their affidavits Ex.PH and Ex.PK declaring that there was no tampering with the sealed parcels of counterfeit currency notes while those remained in their custody. PW-9 C – Ram Chander, in his affidavit Ex.PL testified with regard to delivery of copies of FIR in this case as special report to Illaqa Magistrate and police officers. The prosecution also tendered in evidence report received from FSL Madhuban as Ex.PJ to the effect that aforesaid 66 notes of ₹ 500/- denomination were counterfeit.

Statement of accused under Section 313 Cr.P.C. was recorded in which all the incriminating circumstances appearing against him

in prosecution evidence were put to him which he denied the same contending that he was innocent and had been falsely involved in this case and as a matter of fact, no recovery was effected from him. The accused did not lead any evidence in defence.

After hearing arguments, the trial court convicted the accused and sentenced him as spelt out in upper portion of this judgment.

Challenging the judgment of his conviction and sentence, the accused has filed the present appeal before this Court. On an application having been filed, the sentence was suspended during pendency of the appeal subject to his furnishing requisite bonds to the satisfaction of Chief Judicial Magistrate/ Duty Magistrate, Faridabad.

Now the appeal has come up for final hearing.

I have heard learned counsel for the parties.

The prosecution, by bringing sufficient cogent and convincing evidence, has successfully proved its charges against the accused. There is nothing to dis-believe the credibility of prosecution evidence. No previous enmity between the prosecution witnesses is alleged or proved from which it can be gathered that police might have involved the accused in this case or wrongly deposed against him so as to secure his conviction. Recovery of counterfeit currency note of ₹ 500/- denomination was effected from the conscious possession of accused and he was caught using a counterfeit currency note as genuine fully aware of the fact that the note given by him to the booking clerk of K.C. Cinema, Faridabad founded to purchase of ticket to see movie was not genuine and fake, in terms of the prosecution story which stands fully proved. As per the report received from FSL Madhuban, on examination, the currency notes recovered from the

accused were found to be counterfeit. There is no reason to dis-believe the deposition of the prosecution witnesses and rather, I find the account given by them to be worthy of reliance. The accused has failed to lead any reasonable or plausible explanation with regard to possession of the counterfeit currency notes. Therefore, the judgment of conviction passed by the trial court under Sections 489-B and 489-C IPC does not call for any interference.

Now coming to the sentence, the trial court had sentenced the accused to undergo rigorous imprisonment for five years and to pay fine of ₹ 2000/-, in default of which, to further undergo rigorous imprisonment for six months for offence under Section 489-B IPC. He was also sentenced to undergo rigorous imprisonment for five years alongwith fine to the tune of ₹ 10,000/- in default of which, to further undergo rigorous imprisonment for two years for offence under Section 489-C IPC.

As per the custody certificate, the accused – appellant has undergone total imprisonment of 01 year, 10 months and 04 days. He is not involved in any other case. As submitted by learned Legal Aid counsel representing the appellant, he is a poor person; only earning member in the family; he is not a previous convict; and thus, leniency be shown to him in the matter of sentence.

Though learned State counsel has opposed the aforesaid request, however in view of the mitigating circumstances explained by learned counsel for the appellant – accused, I find that ends of justice shall be adequately met if accused is sentenced to imprisonment already undergone by him in this case. Ordered accordingly.

The impugned judgment is upheld as regards the conviction part, however, as far as sentence part is concerned, the same is modified and the appellant – accused is sentenced to imprisonment already undergone by him in this case, however, the fine part is kept intact. The appellant is directed to deposit the amount of fine in the court of Chief Judicial Magistrate, Faridabad, failing which, the Chief Judicial Magistrate shall issue warrants of arrest against the appellant – accused to make him undergo imprisonment in default of payment of fine as awarded by the trial court.

Disposed of accordingly.

It is pertinent to mention that there being no representation on behalf of the appellant, Mr. Jagtej Singh Kang, Advocate was appointed as Amicus Curiae to assist the Court on his behalf, vide order dated 29.07.2022. He shall be paid remuneration as per the rules by the High Court Legal Services Committee, Chandigarh.

(H. S. Madaan)
Judge

August 06, 2022
avin

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No