

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY STATE NO.27 OF 2020

The State of Maharashtra,
Through Police Inspector,
Tophkhana Police Station,
Dist. Ahmednagar

.. Applicant

Versus

1. Sandesh Babanrao Gaware
2. Vilas Shashikant Raut
3. Pravin Shashikant Raut
4. Shahid Taher Khan
5. Udhav Subhash Nangare
6. Sudhir Ramesh Dupli

.. Respondents

...
Mrs. V. S. Choudhari, APP for the applicant – State.
...

**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 13th July, 2023

ORDER :-

. Present application has been filed under Section 378(1)(b) of the Code of Criminal Procedure seeking leave to file an appeal challenging the judgment and order dated 02.07.2019 passed by the learned Additional Sessions Judge, Ahmednagar in Sessions Case No.13 of 2017; thereby acquitting the respondents from the offence punishable under Section 489(B) and 489(C) of the Indian Penal Code.

2. Heard learned APP Mrs. V. S. Choudhari for the applicant – State. With the able assistance of learned APP, we have gone through the record, which was before the learned Trial Judge.

3. The prosecution story in short is that Police Naik Manohar Gosavi attached to Local Crime Branch, Ahmednagar was on patrolling duty with PSI Sone with other police staff on 16.09.2016. When they reached near Bhistbaug Chowk, PSI Sone received secret information that three persons are likely to come near hotel Priyadarshani along with forged and counterfeit currency notes. PSI Sone then directed police driver to make arrangements for the counting machine of currency notes from hotel Priyadarshani, DSP Chowk. He also called two panchas. The police staff thereafter decided to lay a trap and went near hotel Priyadarshani. Three persons arrived there on motorcycle within 5-10 minutes after arrival of the police. After confirmation that those persons are the same persons in respect of whom the secret information was received, those persons were apprehended by police. Those persons disclosed their names as Sandesh Babanrao Gaware, Vilas Prabhakar Pradhan and Pravin Raut. Personal search of the accused persons were taken in presence of panchas. Accused Vilas was found possessing 100 currency notes of denomination of Rs.1,000/-, accused Pravin was found possessing 76 currency notes of denomination of Rs.1,000/- and accused Sandesh was found possessing 66

currency notes of denomination of Rs.500/-. The currency notes were checked on the machine and it found to be fake currency notes. Therefore, the seizure panchanama was carried out. Accused were taken to Tophkhana Police Station along with seized articles. Police Naik Manohar Gosavi lodged FIR on behalf of the State.

4. The investigation was carried out by PSI Kale of Tophkhana Police Station. It is stated that PSI Sone also conducted parallel investigation of the crime. He handed over the custody of the accused persons and seized motorcycle as well as other articles to PSI Kale. During interrogation, it was revealed that accused No.4 Shahid Taher Khan had given the said counterfeit currency notes to the accused persons and, therefore, PSI Sone went to Shevgaon and arrested Shahid. In all six accused persons were involved. The seized currency notes were sent to Currency Note Press, Nashik for getting expert opinion and after the receipt of the said report and completion of the investigation, charge-sheet was filed.

5. After the committal of the case, the trial was conducted before the learned Additional Sessions Judge, Ahmednagar. Prosecution has examined in all nine witnesses to bring home the guilt of the accused. After going through the entire evidence and hearing both sides, the learned Trial Judge has acquitted all the accused from all the charges. Hence, the present application.

6. The submissions on behalf of learned APP would show that the prosecution is not agreeing with the observations by the learned Trial Judge. It is stated that there is no proper appreciation of evidence when it is found that the accused were found possessing the counterfeit notes and the report of the Currency Note Press, Nashik supports the said contention. The members of the raiding party are supporting each other. It ought not to have been insisted by the learned Trial Judge that independent witnesses ought to have been examined. The alleged lacuna or loopholes in the investigation alone could not have been the reason for the acquittal of accused persons. The fact that there are counterfeit currency notes is a menace to the society and also danger to the economic condition of the country. Technical acquittal ought not to have been granted. Therefore, re-appreciation is required.

7. Here, it can be certainly said that the police witnesses are corroborating each other and also to the prosecution story as stated above. However, the fact remains is as to whether their testimony is sufficient. The first and the foremost fact that is emerging is that all of them are consistent in saying that the secret information was received and when they decided to lay trap, they found three accused persons coming on one motorcycle and upon the personal search, the above denomination of currency notes

were found with them. However, the entire thing has happened in front of hotel Priyadarshani prior to 19.00 hours on 16.09.2016. The FIR Exhibit-38 intentionally does not give the time when the information was received, how much time it took for them to arrange for the raid. Definitely, on or around 7.00 p.m. there would be a rush of people in front of the hotel. No doubt, we cannot witness the testimony of police officer with suspicion, but when there is possibility of the presence of independent witness, then it has to be insisted upon.

8. None of the witnesses including PSI Sone has stated that why they had not allowed the accused to make an attempt to use the counterfeit currency notes. Admittedly, there is no evidence to show that they are the manufacturers of the said currency notes. Therefore, for possessing there should be evidence to prove that it was conscious possession of the accused. Another fact to be noted is that how PSI Sone could have had parallel investigation in the matter. There can be only one investigating officer in a crime at one time. The most important fact is the panch to the seizure panchanama/raid panchanama has turned hostile and not supported the prosecution's story. This is how the insistence of independent witness to be examined has come and, therefore, we do not find any illegality or error committed by the learned Trial Judge in acquitting the accused. The arrest of other three accused persons is on the basis of the

information given by co-accused and, independently there is no evidence against them. Application therefore stands rejected.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm