

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.285 OF 2021

Majid Khan Bismilla Khan
Age 42 years, Occu. Business,
R/o New Baijipura, Indira Nagar,
Tq. & Dist. Aurangabad

... APPELLANT

VERSUS

The State of Maharashtra
To be served through G.P. Office,
High Court, Bench at Aurangabad

... RESPONDENT

.....
Mr. A.S. Tilve, Advocate for appellant
Mr. K.N. Lokhande, A.P.P. for respondent
.....

CORAM : R.G. AVACHAT, J.

Date of reserving judgment : 17th March, 2023

Date of pronouncing judgment : 30th March, 2023

J U D G M E N T :

This is an appeal from conviction. The appellant has been convicted by learned Additional Sessions Judge, Aurangabad in Sessions Case No.284/2017 by judgment and order dated 26/2/2021 for offences punishable under Sections 489-A, 489-C and 489-D of the Indian Penal Code and, therefore, sentenced to suffer rigorous imprisonment as under :

Sr. No.	Sections	Sentence
1.	489-A I.P.C.	R.I. for 8 years and to pay fine of Rs.20,000/-, in default S.I. for 6 months.
2.	489-C I.P.C.	R.I. for 3 years and to pay fine of Rs.10,000/-, in default S.I. for 3 months.
3.	489-D I.P.C.	R.I. for 8 years and to pay fine of Rs.20,000/-, in default S.I. for 3 months.
		The substantive sentences have been directed to run concurrently.

2. The facts giving rise to the present appeal are as follows:

The Crime Branch of City Chowk Police Station, Aurangabad had received a tip-off that the appellant would manufacture counterfeit currency notes at his residence at New Baijipura, Aurangabad. It was, therefore, decided to lay a trap. Presence of two State Government employees was, therefore, secured to act as panch witnesses. The police team headed by P.S.I. Shri Rahul Rode (P.W.5), therefore, effected the raid at a given house in New Baijipura, Aurangabad. It was about 3.15 p.m. of 19/5/2017. It was a ground floor premises consisting of 3 rooms. The appellant was present in the front room. On

search of the premises, 211 counterfeit notes of Rs.2000 denomination, 150 counterfeit notes of Rs.500 denomination and 93 counterfeit notes of Rs.100 denomination were found in the kitchen room. A few original Indian currency notes in the denomination of Rs.2000 and Rs.500 were also found. A green and white colour Scanner of HP Company, one cartridge, 78 blank bond papers of A-4 size, 2 scissors, a pouch containing rubber bands and a Flair Company green Gel Pen were found. The appellant gave a demonstration as to how he would manufacture fake currency notes. Before effecting the raid, the raiding party members offered the appellant search of their person. The seizure panchanama (Exh.68) was drawn. P.W.1 Shivaji, Police Head Constable (member of the raiding team) lodged the F.I.R. - Exh.57.

3. Crime vide C.R. No.165/2017 came to be registered. The crime was investigated. On completion of the investigation, the appellant was proceeded against by filing a charge sheet. The case came to be committed to the Court of Sessions for trial in accordance with law. The Additional Sessions Judge, Aurangabad framed the charge. The appellant pleaded not guilty.

4. To bring home the charge, the prosecution

examined 5 witnesses and produced in evidence certain documents. The trial Court, on appreciation of the evidence in the case, convicted and sentenced the appellant as stated above. Hence the appeal.

5. Shri Tilve, learned counsel appearing for the appellant would submit that, there is no evidence to indicate the premises subjected to raid belonged to the appellant. No written notice was issued to the so called witnesses to secure their presence to act as panchas. There is breach of Section 100(4) of the Code of Criminal Procedure i.e. no services of persons from the neighbourhood of the place of raid were secured to act as panch witnesses. He would further submit that, the sourced information, pursuant to which the raid was effected had not been forwarded to the higher-ups of the concerned officer who had received the same. The electricity bill of the premises stood in the name of one lady. She has not been examined. The fake currency notes produced pursuant to the demonstration have not been duly seized nor those were sent to mint as to show them to have really been forged one. Attention of this Court was adverted to Section 21 of the Indian Penal Code. There is no independent panchanama drawn of demonstration allegedly given by the appellant. According to learned counsel, the appellant is in jail for about 6 years. The

prosecution has failed to prove the appellant to have in conscious possession of the fake currency notes and alleged machinery used for manufacturing thereof. A set of medical papers has been placed on record to suggest the appellant to have been not keeping well. He is a heart patient. The learned counsel relied on the following authorities to ultimately urge for allowing the appeal.

- (1) Roney Dubey Vs. State of West Bengal
(2007 CRI.L.J. 4577)
- (2) R. Raja Vs. Inspector of Police CBCID
(LAWS (MAD)-2014-6-210)
- (3) Shaikh Nazir Shaikh Failu Vs. State OF Maharashtra
2018(6) Mh.L.J. (Cri) 343
- (4) Shaikh Samran @ Lucky Rashid Shaikh Vs. State of
Maharashtra (Bail Application No.689/2020)
- (5) Ramkishan Alias Bala Haribhau Hugunde & ors. Vs.
State of Maharashtra (2015 CRI.L.J. (NOC) 466 (BOM))

6. The learned A.P.P. would, on the other hand, submit that, it is a serious offence. The same has been duly proved by the evidence of the raiding party members and independent panch witness. The learned A.P.P. reiterated the reasons given by the trial Court for conviction of the appellant and consequential sentence. According to learned A.P.P., no interference is, therefore, warranted with the impugned order of

conviction and consequential sentence. He, therefore, urged for dismissal of the appeal.

7. Considered the submissions advanced. Perused the evidence on record besides the authorities relied on.

P.W.1 Shivaji was a Police Head Constable of Crime Branch, Aurangabad City. He was one of the members of raiding party. It is in his evidence that, pursuant to a tip-off received by P.S.I. Rode, a raid was effected at the premises situated in Galli No.25, at Baijipura, Aurangabad. It was a three room premises. The appellant was present in the house. The members of the raiding party offered him search of their person. It was about 3.50 p.m. of 19/5/2017. A search of the premises was taken. During the search, 211 counterfeit currency notes of Rs.2000 denomination, 150 counterfeit notes of Rs.500 denomination and 93 counterfeit notes of Rs.100 denomination were found in a cupboard. One packet was also found containing original Indian currency notes in the denomination of Rs.2000 and Rs.500. A green and white colour scanner of HP Company, one cartridge of the very Company, 78 blank bond papers of A-4 size, 2 scissors of different sizes, pouch containing yellow rubber band and greenish colour Gel Pen were also found. All these articles were seized under the

panchanama drawn then and there in the presence of panch witnesses. P.W.1 Shivaji lodged the F.I.R. Exh.57. All the articles seized during the panchanama were identified by P.W.1 during recording of his evidence before the Court.

He was subjected to a searching cross-examination. It is in his evidence that, it is his first search case. He did not know whether P.S.I. Rode made entry in his personal diary about the information received. He could not state whether photographs or video shooting of the search of the premises were taken. According to him, it was a narrow lane. He did not know whether the place was earlier visited for confirmation of the tip-off. No documents of ownership of the premises were verified. The electricity bill of the premises stood in the name of one lady.

8. P.W.2 Tukaram was another Police Head Constable. He was one of the members of the raiding team. He gave his evidence consistent with the evidence of P.W.1 Shivaji. In his cross-examination, it has come on record that the premises was located in a densely populated locality. Nothing material could be elicited from his cross-examination.

9. P.W.3 Pralhad was a panch witness. It is in his evidence that, he was serving with District Central Co-operative

Bank as a Clerk. Another panch witness was Kadar Shah. His officer had directed him to go to the Crime Branch and assist the police machinery. It is in his evidence, he, therefore, accompanied the police team to a premises situated at Galli No.25, Baijipura, Aurangabad. It is further in his evidence that the appellant was present in the premises. On search of the premises, counterfeit currency notes and the articles described in paragraph No.7 above were found. All those articles were seized then and there under the panchanama (Exh.63). He identified his signature appearing on the panchanama. The articles seized from the premises were shown to him. He identified all those articles.

10. During his cross-examination, it has come on record that, the office of the Commissioner of Police, Aurangabad and his work place are somewhat far away from each other. Between these two offices, there were other Government offices. It appears that, this question was put with a view to suggest that any other Government employee from the close-by of the Crime Branch Office could have been a panch witness. It is further in his evidence that, except the members of the police team and the two panchas, no other person was with them. No written notice was given to him asking for his services as a panch witness. It is further in his evidence that, the appellant

gave a demonstration as to how counterfeit currency notes could be prepared/ manufactured. The details of the demonstration given by the appellant have been incorporated in the panchanama. No separate panchanama in that regard was drawn. Same is the evidence of P.W.1 Shivaji and P.W.3 Pralhad as well.

11. P.W.4 Shyamsundar did the investigation of the crime registered pursuant to the F.I.R. lodged by P.W.1 Shivaji. It is in his evidence that the seized counterfeit currency notes were sent to Nasik Currency Notes Printing Press for examination and report. He admitted to have not recorded statements of persons from the neighbourhood of the premises searched of. He also admitted to have had not secured services of the persons from the neighbourhood to act as panch witnesses.

12. Exhibit 67 is a report submitted by Deputy Manager, Currency Notes Press, Nasik Road. The report indicates the seized currency notes were counterfeit currency notes.

13. P.W.5 Rahul Rode was a P.S.I. who had received the tip-off, pursuant to which the raid was effected. He was one of the members of the raiding team. He too gave his evidence consistent with the evidence of the witnesses referred to

hereinabove. He admitted that, he did not inform his officers the tip-off received by him.

14. It is true that persons from the locality in which the raided premises were situate were not the panch witnesses in the case. Section 100(4) of the Code of Criminal Procedure mandates that, before making a search under Chapter VII of the Code of Criminal Procedure, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do.

15. In the case in hand, there is non-compliance of Section 100(4) of the Code of Criminal Procedure, but the said breach ipso facto does not lead this Court to conclude that the search gets vitiated thereby. There is nothing to suggest that no raid in fact was executed or the prescribed procedure was not followed during effecting the raid.

16. Judgment of the Calcutta High Court in case of Roney Dubey (supra) was on its own facts and circumstances. There was no material to show that the appellant therein had

requisite knowledge that the currency notes found in his possession were fake. The facts of the present case indicate the appellant gave a demonstration as to how fake currency notes could be manufactured.

17. The facts of the case of R. Raja (supra) indicate that there was no evidence to suggest the accused therein was in occupation of the house. None of the witness from the neighbourhood was examined. The facts of the present case suggest the appellant alone was found in the premises. It was, therefore, for him to explain his presence there. He did not come clean. He could have led evidence to show that he happened to be there by chance. He could have further shown that the premises belonged to someone else and was occupied by more than one person. It is reiterated that when the appellant himself gave a demonstration as to how the counterfeit currency notes could be manufactured, the same undoubtedly suggests that the counterfeit currency notes and the articles used for manufacturing the same seized from the premises were in his possession since he alone was found in possession of the premises. It would, therefore, not lie in the mouth of the learned counsel for the appellant that the prosecution failed to make out a case of conscious possession.

18. This Court examined the counterfeit currency notes produced as a result of the demonstration given by the appellant. Those currency notes are found to have resembled with original currency notes. Section 28 of the Indian Penal Code defines the term 'counterfeit'. For better appreciation, Section 28 is reproduced below.

“28. “Counterfeit”. A person is said to “counterfeit” who causes one thing to resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised.

Explanation 1:- It is not essential to counterfeiting that the imitation should be exact.

Explanation 2:- When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended by means of that resemblance to practise deception or knew it to be likely that deception would thereby be practised.

19. It is true that the manufactured notes do not bear signatures of panchas on the face of the currency notes. The signatures of panchas are, however, there at the bottom. On appreciation of the evidence produced by the prosecution, this Court finds no reason to take a different view. The trial Court

has rightly held the prosecution to have proved the appellant to have committed the offences punishable under Sections 489-A, 489-C and 489-D of the Indian Penal Code.

20. The learned counsel for the appellant urged for leniency by reducing the quantum of sentence to one already undergone. The appellant is in jail since 17/5/2017 i.e. close to six years as against the maximum sentence of imprisonment of 8 years. The nature of offence is such that the appellant does not deserve mercy. The appellant has, however, placed on record a set of medical papers suggesting him to be of heart patient. He had been admitted to Government Hospital many a time. The health status of the appellant leads this Court to reduce the quantum of sentence from rigorous imprisonment for 8 years to rigorous imprisonment for 6 years for the offence punishable under Section 489-A and 489-D of the Indian Penal Code. Hence the order :

ORDER

(i) The Criminal Appeal is partly allowed.

(ii) Conviction of the appellant for the offences punishable under Sections 489-A, 489-C and 489-D of the Indian Penal Code, recorded by learned Additional Sessions

Judge, Aurangabad in Sessions Case No.284/2017 by judgment and order dated 26/2/2021 is maintained. The sentence of rigorous imprisonment imposed for offence punishable under Sections 489-A and 489-D of the Indian Penal Code is reduced from rigorous imprisonment for eight years to rigorous imprisonment for six years.

(iii) Rest of the terms of the impugned order of conviction and consequential sentences to stand unaltered.

(R.G. AVACHAT, J.)

fmp/-