IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 146 OF 2024

Nadiya Abdul Mannan ...Applicant

Versus

The State of Maharashtra ...Respondent

....

Mr. C.K. Pendse i/by Ms. Siddhi Bhosale, Advocate for the Applicant.

Mr. Arfan Sait, APP for the Respondent – State.

Mr. Ratan Deshmukh, PSI, Bandra Police Station.

CORAM : PRAKASH D. NAIK, J.

DATE : 7th FEBRUARY, 2024.

P.C.

1. The Applicant has invoked the inherent powers of this Court under Section 482 of Code of Criminal Procedure challenging Order dated 5th September, 2023 passed by Additional Sessions Judge rejecting the application for discharge preferred by the Applicant and subsequent Order dated 14th December, 2023 framing charge passed by the trial Court.

2. The prosecution arises out the First Information Report (for short 'FIR') registered with Bandra Police Station vide C.R. No.323 of 2019 on 15th April, 2019 for offences under Sections 489-B and 489-C of Indian Penal Code (for short 'IPC'). The complainant is employee of ICICI Bank and at the relevant time he was working as

Assistant Bank Manager at Water Field Road, Bandra (W) Branch of the Bank.

3. The brief facts of the prosecution case are as under :

On 8th April, 2019, the Applicant having account in the ICICI Bank had tried to deposit the amount in CDM machine of the bank. 61 notes of Rs.2,000/- each were stuck up in the CDM machine. The Deputy Branch Manager inquired with her about grievance and it was informed by the Applicant that she had visited the bank for depositing amount of Rs.1,50,000/-, she deposited 75 notes of Rs.2,000/- in CDM machine for depositing the said amount in her account. 14 notes were returned and received by her and balance notes were stuck up in the machine. On verifying her bank statement, she realized that the amount was not credited into her account and hence she made a complaint with a bank that 61 notes of Rs.2,000/- each were stuck up in the machine. The Deputy Branch Manager accepted the written complaint from the Applicant. On 9th April 2011 the cashier of the bank verified the CDM machine and found that 42 counterfeit currency notes were lying in the tray of the machine. The serial number on the said notes was same. On verification about the source of the currency notes, it was found that the notes were deposited in the account of the Applicant. The

Applicant was informed about the fact that 42 currency notes deposited by the Applicant were counterfeit. On verification of CCTV footage it was found that the currency notes were deposited by the Applicant on 8th April, 2019. FIR was registered on 15th April, 2019. The Applicant was arrested on 19th April, 2019. During the course of investigation the involvement of Accused No.2 was disclosed. It was alleged that he is the person who was involved in manufacturing and distributing the counterfeit currency notes. On completing investigation charges-sheet was filed.

4. The Applicant preferred an application for discharge before the trial Court. The said application was rejected vide Order dated 5th September, 2023. Charge was framed vide Order dated 14th December, 2023 both the Accused for offences under Sections 489-A , 489-B, 489-C r/w 34 of IPC and Sections 419, 468, 471 of IPC.

5. Learned Advocate for the Applicant submitted as under :

i. The Accused No.2 had handed over cash amounting to Rs.1,50,000/- to the Applicant. On receiving the said amount, the Applicant sought to deposit the same in her bank account by utilizing CDM machine. Out of total 75 currency notes, 14 notes were rejected/ejected by the machine and 61 notes were deposited. However, the amount in respect of 61 notes was not reflected in her bank account. Hence, she informed the bank authorities the same. Upon suggestion of the Bank Officer, the Applicant made a complaint in writing that the necessary effect pursuant to deposit of 61 notes was not reflected in her statement of bank account. It was revealed that the currency notes deposited by the Applicant from the cash amount received by her from Accused No.2 were counterfeit.

ii. The Applicant had no knowledge that the said currency notes which were handed over to her by Accused No.2 are counterfeit. The Applicant is a victim at the hands of Accused No.2. She has been falsely implicated in this case.

iii. The case of the prosecution is that the amount was handed over to the Applicant by the co-accused. No knowledge or motive can be attributed to her.

iv. The Applicant would not have deposited the amount in her bank account, if she had knowledge that currency notes were counterfeit.

v. The learned Sessions Judge has erroneously rejected the Application for discharge. There is no evidence on record to infer that the Applicant had knowledge about the counterfeit notes and that she had utilized the currency notes after having knowledge about same being counterfeit.

vi. Charge could not have been framed against the Applicant. *Prima facie* no evidence was available to prosecute the Applicant for the alleged offences.

vii. The Applicant was not knowing Accused No.2. She was introduced to him by one of the witness. The statement of the said witness itself indicate that the Applicant had visited the Accused No.2 for a particular purpose. There is no evidence to indicate that she had abetted Accused No.2 or conspired with him or acted in furtherance of common intention to manufacture, use and possess the counterfeit notes.

6. Mr. Pendse has relied upon the decision of This Court in the case of ***Sanskriti Jayantilal Salia V/s. The State of Maharashtra And Ors.***[1].

7. Learned APP submitted that at the stage of framing of charge the Court is not required to conduct mini trial. If *prima facie* case is made out, charge can be framed. The contention of the Applicant that she had no knowledge that the currency notes were counterfeit cannot be accepted at this stage. Existence of knowledge

1 Criminal Writ Petition No.3027 of 2018 dated 1st October, 2018

or *mens rea* will have to be decided during the trial. Huge currency notes were in possession of the Applicant. She had deposited the said amount into her bank account. Some of the notes were returned on being deposited, the said notes were redeposited by the Applicant and then she lodged the complaint with the bank that the amount is not credited in her bank account. The Applicant had visited the hotel where the Accused No.2 had checked in. There is evidence to corroborate her visit to hotel in the form of CCTV footage. There is evidence to show that the Applicant had deposited the counterfeit currency notes into her bank account. The Accused No.2 was found in possession of printer in the hotel premises. The said printer was allegedly used for manufacturing counterfeit notes. The Applicant should have known that the counterfeit notes were bearing similar number and therefore, it can be inferred that the Applicant had knowledge about the fact that the notes were fake. There is sufficient evidence to proceed against the Applicant. The trial Court has rightly rejected the application for discharge. The trial Court has framed charge for the offences under Sections 489-B, 489-A, 489-C r/w 34 of IPC and Sections 419, 468, 471 of IPC.

8. Learned APP has relied upon the following decision of the Supreme Court in the case of State of ***State of Rajasthan V/s. Ashok***

Kumar Kashyap[2].

9. The Applicant is having a bank account with ICICI Bank situated at Water Field Road, Bandra (W). On 8th April, 2019 she visited the bank for depositing the amount of Rs.1,50,000/-. She deposited 75 currency notes of Rs.2,000/- each. 61 notes were stuck in the machine and 14 notes were returned to her. The Applicant was under the impression that 61 notes were deposited into her account. However, since the amount was not reflected in her bank statement, she approached the bank officials. She was advised to submit written complaint. She submitted written complaint. On the next day it was revealed that currency notes were counterfeit.

10. It is pertinent to note that the Applicant had visited the bank to deposit the amount into her account. She attempted to deposit the amount of Rs.1,50,000/-. The fact that the Applicant tried to deposit the amount into her account, itself indicate that she had no knowledge that the currency notes were counterfeit. The person having knowledge that the currency notes are counterfeit would not deposit the same into the bank which could be the agency to immediately detect that the currency notes are counterfeit. It is also pertinent to note that the Applicant had immediately approached the bank officials and expressed her grievance that the

2 (2021) 11 SCC 191

amount is not credited into her account. Written complaint was filed by her. The conduct of the Applicant clearly reflects that she was not aware that the notes were counterfeit. Learned APP has submitted that the Applicant had redeposited the amount even after knowing that notes were counterfeit. There is no evidence to support the said fact. The currency notes were deposited by the Applicant into her account. Some notes were returned to her and majority of the notes were stuck into the CDM machine which were not returned to her. On the next day it was revealed that most of the notes were counterfeit. The prosecution case is that the Applicant was acting in connivance with Accused No.2. The evidence collected by the investigating agency itself indicate that the Applicant has no nexus with Accused No.2 except meeting him prior to the incident of depositing the amount into her bank account. The statement of the one of witness indicate that the Applicant was not knowing the Accused No.2 and therefore, there is no evidence to infer that the Applicant had aided and abetted Accused No.2 in manufacturing, possessing or distributing the counterfeit currency notes.

11. There no evidence in the charge-sheet which satisfy the ingredients necessary to frame charge under Sections 489-A, 489-B, 489-C of IPC and 419, 468, 471 of IPC against the Applicant. The

charge-sheet itself indicate that currency notes were handed over to the Applicant by Accused No.2. There is nothing to deduce that the Applicant had knowledge that the currency notes were counterfeit.

12. Sections 489-A, 489-B and 489-C read as follows :

> "**489-A. Counterfeiting currency-notes or bank-notes** — Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any currency-note or bank-note, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."
>
> "**489-B. Using as genuine, forged or counterfeit currency-notes or bank-notes** — Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."
>
> "**489-C. Possession of forged or counterfeit currency-notes or bank-notes** — Whoever has in his possession any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

13. None of the ingredients of the aforesaid offences are attracted against the Applicant. There is no evidence to show that the Applicant was involved in manufacturing counterfeit currency notes. The act attributed to the Applicant is that she had deposited the currency notes in the CDM machine of the bank which were later found to the counterfeit. From the charge-sheet it cannot be infer that the Applicant had knowledge that the notes were counterfeit. *Mens rea* is an essential ingredient of the penal provisions which are lacking in the present case. On the basis of the possession of the currency notes the Applicant cannot be prosecuted in the absence of any evidence to indicate that she had knowledge that the notes were counterfeit. The offence under Section 419, 468 and 471 cannot be applied against Applicant.

14. During the course of investigation, statement of Firoj Wajid Sayyad was recored on 16th May, 2019. He is the staff of hotel Taj. He has stated that the Accused No.2 had checked in Taj hotel and he had called for the printer which was kept in his room. He also stated that one lady had come to meet him and she had checked in into the room occupied by Accused No.2. She left after some time and thereafter, the Accused No.2 checked out from the hotel. The prosecution is relying upon the evidence that the Applicant had

visited Taj hotel. However, on the basis of said evidence it cannot be said that the Applicant was acting in connivance with Accused No.2 for indulging in counterfeit currency notes. The presence of the Applicant in the hotel is explained by the statement of prosecution witness. During investigation statement of Mr. Afasar Mohd. Abbas Mohd. Shaikh was recorded on 20^{th} May, 2019. He has stated that he was involved in introducing the models to the photographer for preparing catalogue and photo shoot. Some of his client were making request to him that on account of financial constraints they are willing to act as call girls. The witness has sent such girls to his client and earned commission. He knows Rahul Borad (Accused No.2). He is from Gujarat. He used to visit Mumbai. At his request the witness used to sent photographs of girls to him and on selection the amount was decided. The witness used to earn commission. On 8^{th} April, 2019, Mr. Borad gave a call to him and made a request for sending a girl to him. The witness gave a call to his friend Abbas and called for certain photographs. On receipt of the photographs, he forwarded them to Rahul Borad. He selected the photograph of Applicant and decided the amount of Rs.1,50,000/- for her. The witness gave address of Rahul Borad (Accused No.2) to Applicant. She visited him at hotel Taj. Thereafter, she told the witness that the person to whom she was sent by him had given counterfeit currency notes and Police took her to the Police Station. The statement of this witness itself indicate that the Applicant was not know to Rahul Borad (Accused No.2) and the witness. He collected her photograph from another person and sent it to Rahul Borad. Thus, there was no acquaintance between the Applicant and Rahul Borad. Investigation revealed that Rahul Borad had occupied the hotel premises by changing his name. The case of the prosecution is that the Accused No.2 had brought the printer for counterfeiting currency notes. By no stretch of imagination it can be assumed that the Applicant had any knowledge of the fact that the currency notes were counterfeit. It is the prosecution case that she received amount from Accused No.2 towards the deal with Accused No.2. No connivance could be established between the Applicant and Accused No.2 except for the deal which they had for which she had received the amount of Rs.1,50,000/-. Thus, it is the prosecution case itself that the Applicant had visited Accused No.2 and she had received an amount of Rs.1,50,000/- from him. It is also case of the prosecution that the Accused No.2 was involved in manufacturing the counterfeit currency notes. In the light of the aforesaid circumstances, the Applicant cannot be held liable for the alleged offences.

15. In the case of *State of Rajasthan V/s. Ashok Kumar Kashyap (supra),* the Apex Court has observed that at the stage of 227 the Judge has merely to sift evidence in order to find out whether or not there is sufficient ground for proceedings against the Accused. If the Court comes to the conclusion that there is sufficient ground to proceed, charge can be framed against the Accused and if not the Accused has to be discharged. It is not necessary for Court to enter into pros and cons of matter or into weighing and balancing of evidence and probabilities which is the function of the Court after trial starts. At the stage of framing of charge and/or considering the discharge application, mini trial is not permissible.

16. It is pertinent to note that there is no *prima facie* evidence to frame charge against the Applicant. Perusal of the provisions, extracted above, reflects *mens rea* for commission of offences under Sections 489-B and 489-C which is evident from wordings, "knowing or having reason to believe the currency notes or bank notes are forged or counterfeit". Without the *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 IPC. 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 Applicant had the requisite *mens rea.*

17. Considering the factual aspects, the Applicant cannot be charged for the aforesaid offences. The trial Court has committed an error in rejecting the Application for discharge and framing charge against the Applicant.

ORDER

i. Criminal Application No.146 of 2024 is allowed;

ii. Order dated 5th September, 2023 passed by learned Additional Sessions Judge rejecting the application for discharge and Order dated 14th December, 2023 framing charge against the Applicant are quashed and set aside and the Applicant is discharged from Sessions Case No.2002 of 2019.

iii. Application stands disposed off.

[PRAKASH D. NAIK, J.]