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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Date of Decision: 22<sup>nd</sup> April, 2024*

+ CRL.A. 117/2022

AKIL

..... Appellant

Through: Mr. Vinayak Bhandari, Ms. Jaisal Singh and Ms. Teesta Mishra, Advocates along with Appellant (through Video Conferencing)

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Ms. Shubhi Gupta, APP for State with SI Vikram Singh, PS: Chandni Mahal.

+ CRL.A. 141/2022

MOHD YASIN @ SAHIN

..... Appellant

Through: Mr. Vinayak Bhandari, Ms. Jaisal Singh and Ms. Teesta Mishra, Advocates along with Appellant (through Video Conferencing)

versus

STATE NCT OF DELHI

..... Respondent

Through: Ms. Shubhi Gupta, APP for State with SI Vikram Singh, PS: Chandni Mahal.

**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J.**

1. These appeals have been filed on behalf of the Appellants under Section 374(2) Cr.P.C. read with Section 482 Cr.P.C., laying a challenge to the judgment dated 09.02.2022, whereby they have been convicted and order on sentence dated 24.02.2022, passed by learned Additional Sessions



Judge-02, Central District, Tis Hazari Courts, Delhi, in SC No. 259/2018 in FIR No. 205/2017. FIR was initially registered under Sections 489B/489C/34 IPC at PS: Chandni Mahal and thereafter, Sections 489A/489D were added in the Charge Sheet. Since the appeals arise out of a common judgment, they were heard together and are being decided by this common judgment.

2. It is the case of the prosecution that on 13.11.2017, at about 4:00 PM, PW-2 SI Bijender Singh along with PW-5 Constable (Ct.) Anand, PW-3 Ct. Harphool and PW-9 Ct. Rajveer was on patrolling duty. When they reached near Kabristan Chowk in the area of Chandni Mahal, they saw the Appellants coming from the side of Chitli Kabar towards Kabristan Chowk and on seeing the police party, both turned and started running. PW-2 SI Bijender Singh chased them and finally apprehended the Appellants in front of a shop Azad Telecom, near Kabristan Chowk, Turkman Gate. On instructions of PW-2, Ct. Rajveer, PW-9 frisked the Appellants and from the right side pocket of the Kurta of Appellant Yasin, 100 currency notes of denomination of Rs.50/-, each having the same number i.e. 1BB546209, were recovered and from the right side pocket of the pant of the Appellant Akil, 102 currency notes of denomination of Rs.50/- each having the same number i.e. 5DU1075813 and from the left side pocket, 99 currency notes of denomination of Rs.50/- each having same number i.e. 7AB951815 were recovered. Currency notes recovered from the possession of Appellant Yasin were seized vide seizure memo Ex.PW2/A and currency notes recovered from the possession of Appellant Akil were seized vide seizure memo Ex.PW2/B by PW-2 ASI Bijender Singh and sealed in three different containers with the seal of BS and handed over to PW-5 Ct. Anand for depositing in the *Malkhana* of the police station.



3. It is the case of the prosecution that PW-2 prepared the *tehrir* and sent the same for registration of FIR through PW-5 and thereafter FIR was registered at PS: Chandni Mahal under Sections 489B/489C/34 IPC. Further investigation was handed over to PW-7, SI Thakur Singh, who along with PW-6, ASI Surender Pal Kaushik and PW-5 Ct. Anand went to the spot. *Pullanda* of the seized currency notes was handed over to him by PW-2. The IO PW-7 prepared the site plan at the instance of PW-2 and during investigation, he recorded the statement of the Appellants and thereafter at the instance of Akil, one coloured printer, original currency notes of Rs.50/- denomination and one bag containing 26 fake currency notes of Rs.500/- denomination, 334 fake currency notes of Rs.100/- denomination (without cutting), 7 fake currency notes of Rs.100/- denomination, one paper sheet on which three currency notes of Rs.100/- denomination were scanned (without cutting), 3 original currency notes of Rs.100/- denomination (kept in transparent polythene), 420 fake currency notes of Rs.50/- denomination (without cutting), 21 fake currency notes of Rs.50/- denomination (without cutting), 75 sheets on which 3 currency notes each of Rs.50/- denomination were scanned, one scissors, one black colour charger, one white colour data cable, four green colour pens, one marker and 165 pages of A-4 size, were recovered from his house. During investigation IO recorded the statements of various witnesses under Section 161 Cr.P.C.

4. Upon completion of the investigation, Charge Sheet was filed under sections 489A/489B/489C/489D/34 IPC. As per the prosecution case, PW-7 sent the recovered currency notes to the Currency Note Press, FSL, Nasik for examination and the FSL report dated 21.02.2018 was exhibited as Ex.PX-1. By order dated 29.08.2018, Trial Court framed charges against



the applicants under Sections 489A/489B/489C/489D/34 IPC, to which they pleaded 'not guilty' and claimed trial. To substantiate its case, prosecution examined total 11 witnesses and exhibited various documents. Separate statements of the Appellants were recorded under Section 294 Cr.P.C. and they admitted the FSL report. Thereafter, Statements of the Appellants were recorded under Section 313 Cr.P.C. Appellants did not lead defence evidence.

5. Upon conclusion of the trial and based on evidence adduced therein, the Appellants were convicted by the Trial Court under Sections 489B and 489C IPC, but acquitted under Sections 489A and 489D IPC. By order on sentence dated 24.02.2022, Appellants were sentenced to RI of 7 years with fine of Rs.5,000/- and in default of payment of fine, further SI of 1 month for offence under Section 489 B IPC and RI for 5 years and fine of Rs.3,000/- and in default of payment of fine, SI for 15 days for offence under 489C IPC. All sentences were directed to run concurrently and benefit of Section 428 Cr.P.C. was given to the Appellants.

#### **Arguments on behalf of the Appellants**

6. Trial Court has gravely erred in convicting and sentencing the Appellants. The entire story of the prosecution is false and fabricated. Appellants had taken a stand in the Statement of Accused under Section 313 Cr.P.C., that the counterfeit currency was planted on the Appellants after they were picked up from their residence. Prosecution's narrative of the incident of 03.11.2017 is unbelievable. It was alleged in the chargesheet that the Appellants saw the police and started running away in a crowded market area. There could be no plausible reason for the Appellants to run in the absence of any provocation or threat. All the recovery witnesses deposed in a stereotyped manner and failed to answer the important



question as to why the Appellants were straightaway searched, without asking any question or making an enquiry, which itself casts a suspicion on the alleged recovery of the currency.

7. SI Bijender Singh PW-2 testified that he had put the counterfeit currency allegedly seized from the Appellants into a plastic box and sealed it with it a doctor's tape. This was a false claim as it was admittedly not mentioned in the DD Entry No.18 Ex.PW-2/PX-1 that PW-2 was carrying an IO kit. Absence of evidence on the aspect that police party was carrying an IO kit at the time of raid or search and recovery, strikes at the root of the prosecution case. [Ref: *Diwakar v. State of Himachal Pradesh, Crl. Appeal 106/2018*, decided on 05.07.2019; *Ashok Kumar v. State of Himachal Pradesh, 2020 SCC OnLine HP 494*; *Shambu Ram v. State of Himachal Pradesh, 2020 SCC OnLine HP 32*; and *Chhatter Singh v. State of Himachal Pradesh, Criminal Appeal No.604/2019*, decided on 20.10.2023]. It is admitted that the plastic boxes in which the counterfeit notes were seized were not issued by the department. PW-2 did not state in his deposition that he had purchased the boxes from the spot or the market area, from where the Appellants were nabbed. It does not sound to reason that a policeman would spend his own money to buy boxes or other tools for the purpose of investigation.

8. It is an undisputed position that the area from where the Appellants were apprehended was a crowded market place, but no efforts were made to join an independent person from the public in the investigation and thus the case of the prosecution was wholly based on testimonies of police personnel, which were interested witnesses. PW-3 acknowledged in the cross-examination that the spot was a crowded place and yet the police failed to examine a single public witness. In fact, PW-3 admitted that PW-2



did not even take down the names/details of those who refused to join the proceedings. Non-joinder of public witnesses may not be fatal to a trial as a singular ground, but in a case where mere possession can be an offence and lead to conviction, Court ought to tread with caution in the absence of independent/public witnesses as observed by the Supreme Court in *State of Punjab v. Balbir Singh*, (1994) 3 SCC 299 and *Mohan Singh v. State of Haryana*, (1995) 3 SCC 192.

9. The essential ingredients of offences under Section 489B and 489C have not been established by the prosecution during the trial. To constitute an offence under Section 489B mere possession of counterfeit notes is not sufficient and *mens rea* or intention to use the counterfeit notes is an essential ingredient of the offences. In *Umashanker v. State of Chhattisgarh*, (2001) 9 SCC 642, the Supreme Court unequivocally observed that *mens rea* of offences under Sections 489B and 489C is knowing or having reason to believe that the currency notes are forged or counterfeit. In the absence of establishing *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 an offence under Section 489B. So also possessing or even intending to use any forged or counterfeit currency is not sufficient to make out the commission of offence under Section 489C, in absence of *mens rea*. Therefore, to convict an accused under Section 489C, possession, knowledge of notes being counterfeit and intention to use as such, are the essential ingredients but in the present case prosecution has failed to lead any evidence to prove that appellants had knowledge of the notes being counterfeit and/or had an intention to use them as genuine. [Ref: *Panna Lal Gupta v. State of Sikkim*, 2009 SCC OnLine Sikk 19]. Similarly, to invoke



provisions of Section 489B, there has to be a transaction/sale and mere possession is not enough to shift the burden on the accused to prove innocent possession or use. [Ref.: *Madan Lal Sharma v. State, 1989 SCC OnLine Cal 237* and *Ashu Mondal v. State of West Bengal, 2012 SCC OnLine Cal 12428*].

10. Even if it is assumed that the notes in question were found in the possession of the Appellants, prosecution was required to further establish that they were 'counterfeit' in terms of Section 28 IPC. Counterfeit is not the same as fake or replicas. As per prosecution's own case, the notes were scanned and printed and mere replication cannot be called counterfeiting. Section 28 defines counterfeiting and envisages the existence of intention to deceive. The quality/nature of the notes in question in the present case as described by the prosecution, cannot deceive any reasonable or prudent person and this is fortified by the findings of the Currency Note Press, Nashik which rendered the FSL Report. Marked differences were noted in the samples as compared to genuine notes viz: in the length and width; in thickness and texture; absence of security features and watermark; and prints on white sheets of paper. In a nutshell, no evidence was led to prove that the counterfeit notes were of such a nature or description that a mere look at them would convince or even leave an impression on the mind of a person with average intelligence, that they were counterfeit notes. No reasonable person would be deceived by a currency note which is printed on A-4 size white sheets of paper taken from a scanner. Moreover, prosecution did not put any specific question to the Appellants during the recording of their statements under Section 313 Cr.P.C., which would suggest that they had knowledge that the notes were counterfeit. [Ref.: *M. Mammutti v. State of Karnataka, (1979) 4 SCC 723*].



11. Despite the failure to prove the possession beyond reasonable doubt as also the source of the notes allegedly recovered from the Appellants, the prosecution made no attempt to link the counterfeit notes to the Appellants and their sole attempt to establish that the counterfeit currency notes were printed or scanned by the Appellants failed inasmuch as the allegedly recovered printer-cum-scanner was not sent by PW-7 to FSL, which might have established the link. Noting this flaw, the Trial Court acquitted the Appellants for offences under Sections 489A and 489D.

**Arguments on behalf of the State**

12. Learned APP appearing on behalf of the State argued that the impugned judgment convicting the appellants and the order on sentence calls for no interference. Prosecution has proved its case beyond reasonable doubt as all witnesses have duly supported the case and there is no contradiction or discrepancy in their testimonies and none has been pointed out. Prosecution has successfully proved recovery of huge quantity of fake currency notes from the possession of the Appellants through the evidence of PW-2 SI Bijender, PW-3 Constable Harphool, PW-5 Ct. Anand, PW-9, Ct. Rajveer and PW-6 ASI Surender Pal Kaushik. It was also proved beyond a shadow of doubt that from the house of Akil, at his instance a printer-cum-scanner, huge quantity of counterfeit notes of various denominations, A-4 sheets, data cable, green coloured pens, etc. were recovered.

13. The patrolling team members apprehended the Appellants when they were attempting to run away on seeing the police and on frisking counterfeit notes were recovered from their pockets, which were seized and sealed by PW-2. All the currency notes had the same numbers and PW-2, PW-3, PW-5 & PW-9 identified the case property before the Trial Court.



Some of the currency notes recovered from the possession of the Appellants were sent to Currency Note Press, Nashik and the report Ex.PX-1 proved that the currency notes were counterfeit and significantly, Appellants admitted the report.

14. In order to prove the offence under Section 489C, prosecution was required to establish that Appellants were in possession of the counterfeit currency notes under knowledge or having reason to believe that they were fake, forged or counterfeit and had the intent to use them as genuine. Each of these ingredients have been proved through the testimonies of PW-2, PW-3, PW-5, PW-6, PW-7 and PW-9, with no inconsistency in the testimonies and the FSL report corroborates their depositions. Once the possession was established by the prosecution, under Section 106 of the Indian Evidence Act, 1872 (hereinafter referred to as Evidence Act), burden shifted on the Appellants to prove otherwise. In *Anis and Another v. State of NCT of Delhi, 2009 SCC OnLine Del 4098*, Court observed that under Section 106 of Evidence Act, when any fact is especially in the knowledge of any person, the burden of proving that fact is upon him and therefore, if the person found in possession of currency notes does not disclose how he came in possession and chooses to deny the possession of such currency notes completely, Court would be justified in inferring that he had received notes from someone. Appellants were found in possession of the counterfeit currency and failed to disclose the source. Adverse inference has been rightly drawn against them by the Trial Court. Recovery of huge quantity of fake currency notes from the Appellants as well as from the house of Akil, at his instance, establishes *mens rea* and the fact that they had knowledge that the currency notes were counterfeit and conviction under Sections 489B and 489C IPC, deserves to be upheld. It cannot be overlooked that



Appellants are habitual offenders and previously involved in over 80 cases respectively as per the SCRB Report, out of which there are convictions in several cases.

15. Heard counsel for the Appellants and learned APP for the State.

16. Appellants have been convicted for offences punishable under Sections 489B and 489C IPC. The Supreme Court in ***K. Hashim v. State of T.N., (2005) 1 SCC 237***, made the following observations, in the context of Sections 489A to 489E and Section 28 IPC, which defines the expression ‘Counterfeit’:-

*“46. Sections 489-A to 489-E deal with various economic offences in respect of forged or counterfeit currency notes or banknotes. The object of the legislature in enacting these provisions is not only to protect the economy of the country but also to provide adequate protection to currency notes and banknotes.*

*47. Section 489-A not only deals with complete act of counterfeiting but also covers the case where the accused performs any part of the process of counterfeiting. Therefore, if the material shows that the accused knowingly performed any part of the process of counterfeiting, Section 489-A becomes applicable.*

*48. Similarly Section 489-B relates to using as genuine forged or counterfeited currency notes or banknotes. The object of the legislature in enacting this section is to stop the circulation of forged notes by punishing all persons who knowing or having reason to believe the same to be forged do any act which could lead to their circulation.*

*49. Section 489-C deals with possession of forged or counterfeit currency notes or banknotes. It makes possession of forged and counterfeited currency notes or banknotes punishable. Possession and knowledge that the currency notes were counterfeited notes are necessary ingredients to constitute offence under Sections 489-C and 489-D. As was observed by this Court in *State of Kerala v. Mathai Verghese [(1986) 4 SCC 746 : 1987 SCC (Cri) 3 : AIR 1987 SC 33]* the expression “currency notes” is large and wide enough in its amplitude to cover the currency notes of any country. Section 489-C is not restricted to Indian currency note alone but it includes the dollar also and it applies to American dollar bills.*

*50. The wording of Section 489-D is very wide and would clearly cover a case where a person is found in possession of machinery, instrument or materials for the purpose of being used for counterfeiting currency notes, even though the machinery, instruments or materials so found were not all the materials particular (sic) required for the purpose of counterfeiting.*



**51.** Section 28 defines the word “counterfeiting” in very wide terms. The main ingredients of counterfeiting as laid down in Section 28 are:

- (1) causing one thing to resemble another thing;
- (2) intending by means of that resemblance to practise deception; or
- (3) knowing it to be likely that deception will thereby be practised.

Thus, if one thing is made to resemble another thing and the intention is that by such resemblance deception would be practised or even if there is no intention but it is known to be likely that the resemblance is such that deception will thereby be practised, there is counterfeiting. (See *State of U.P. v. Hafiz Mohd. Ismail* [AIR 1960 SC 669 : 1960 Cri LJ 1017 : (1960) 2 SCR 911]).

**52.** In the said case it was observed that there is no necessity of importing words like “colourable imitation” therein. In order to apply Section 28, what the court has to see is whether one thing is made to resemble another thing and if that is so and if the resemblance is such that a person might be deceived by it, there will be a presumption of the necessary intention or knowledge to make the thing counterfeit, unless the contrary is proved.

**53.** “Counterfeit” in Section 28 does not connote an exact reproduction of the original counterfeited. Explanation 2 of Section 28 is of great significance. It lays down a rebuttable presumption where resemblance is such that a person might be deceived thereby. In such a case the intention or the knowledge is presumed unless the contrary is proved.”

**17.** In *Umashanker (supra)*, the Supreme Court observed as under:-

“8. A perusal of the provisions, extracted above, shows that mens rea of offences under Sections 489-B and 489-C is “knowing or having reason to believe the currency notes or banknotes are forged or counterfeit”. Without the aforementioned mens rea selling, buying or receiving from another person or otherwise trafficking in or using as genuine forged or counterfeit currency notes or banknotes, is not enough to constitute offence under Section 489-B IPC. So also possessing or even intending to use any forged or counterfeit currency notes or banknotes 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 PW 2, PW 4 and PW 7 that they were able to make out that the currency note alleged to have been given to PW 4 was fake, “presumed” such a mens rea. On the date of the incident the appellant was said to be an eighteen-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 the 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 IPC and acquit him of the said charges (see: M. Mammutti v. State of Karnataka [(1979) 4 SCC 723 : 1980 SCC (Cri) 170 : AIR 1979 SC 1705] ).”*

18. In order to prove the charge under Section 489C IPC, prosecution is required to establish that: (i) the currency note or the bank note in question was forged or counterfeit; (ii) conscious possession of the currency or the bank notes; (iii) knowledge or reason to believe that currency notes were counterfeit; and (iv) intention to use the currency notes as genuine. To substantiate the charge under Section 489B IPC, prosecution is required to prove that: (i) currency note was fake or counterfeit; (ii) accused sold or bought or received or trafficked or used counterfeit currency as genuine with the knowledge or having reason to believe the currency to be forged or counterfeit.

19. It has been repeatedly held in various judgments that if a person is found in possession of counterfeit currency and chooses not to give any explanation for such possession and denies the recovery, which defence is found to be false, the inevitable inference that can be drawn is that he had reasons to believe that the currency notes were counterfeit for which reason he denies the recovery from him. Knowledge and intention are a state of mind which ordinarily cannot be proved by direct evidence but can be inferred or gathered from attending circumstances. In a given case if possession is proved, for which there is no justifiable explanation of how the person came into possession and there is denial simplicitor, an inference of requisite knowledge is to be drawn and this would attract the mischief of Section 489C IPC. [Ref.: **V.K. Jain v. C.B.I., 2015 SCC OnLine Del 10665** and **Piyush Rastogi v. State, 2013 SCC OnLine Del 4422**]



20. In *Nagendra Sah v. State of Bihar, (2021) 10 SCC 725*, the Supreme Court held that if prosecution succeeds in establishing a particular fact, from which a reasonable inference can be drawn regarding the existence of certain other facts, which are within the knowledge of the accused and if the accused fails to offer any satisfactory explanation about the existence of those other facts, Court may draw an appropriate inference. To the same effect are the observations of this Court in *V.K. Jain (supra)*.

21. On the basis of the evidence, it is now to be seen whether the prosecution succeeded in proving the fundamental ingredient of Section 489C before the Trial Court. I have carefully perused the evidence led by the prosecution to prove possession and recovery from the Appellants. PW-2 SI Bijender Singh deposed that on 03.11.2017, he was posted as In-charge, Police Post Turkman Gate, PS: Chandni Mahal. On the said date, he was on patrolling duty along with Ct. Anand, Ct. Rajveer and Ct. Harphool. At about 4:00 PM, they reached Mohalla Kabristan Chowk, where they saw the Appellants coming from the side of Chitli Kabar and on seeing the police they started running. However, the police party apprehended them from outside the shop 'Azad Telecom'. On enquiry, Appellants disclosed their names and residential addresses and on being suspicious, PW-2 directed Ct. Rajveer to search both the Appellants. During the frisking of Yasin, 100 currency notes of denomination of Rs.50/-/- each having same number i.e., 1BB546209 were found in his possession and from the possession of Akil 102 currency notes of denomination of Rs.50/- each having the same number i.e., 5DU107581 and 99 currency notes of denomination of Rs.50/- each having same number i.e., 7AV951815 were recovered. Since all currency notes were having the same number, PW-2 got suspicious that they were fake. The



recovered currency notes were seized and sealed by PW-2 in a plastic box and closed with doctor's tape and immediately sealed with the seal of 'BS'. The box containing notes recovered from Yasin was given serial number 1 while the other box containing 102 notes recovered from Akil was given serial number 2 and the box containing 99 currency notes was numbered as serial number 3. Seizure memo in respect of currency seized from Yasin Ex.PW2/A bears PW-2's signature at point A; that of Ct. Rajveer at point B and of the Yasin at point C. Seizure memo in respect of Akil Ex.PW2/B bears PW-2's signature at point A; that of Ct. Anand at point B; that of Ct. Rajveer at point C and of Akil at point D. PW-2 prepared the *rukka* and handed over the same to PW-5 for registration of FIR, which was subsequently registered and investigation was handed over to PW-7. PW-2 correctly identified the Appellants in Court. During the recording of evidence of PW-2, seals of the three plastic boxes were broken and the currency notes bearing the stamp of Currency Note Press were identified by PW-2.

22. PW-3 Ct. Harphool, PW-5 Ct. Anand and PW-9 Ct. Rajveer deposed on similar lines as regards the possession of the currency notes and their recovery from the Appellants. PW-3 also stated that PW-9 searched Yasin and upon formal search the currency notes were recovered from the right side pocket of his *kurta* and upon formal search of Akil, the notes were recovered from both the pockets of his pants. He testified that PW-2 had placed the currency notes in plastic boxes, closed them with a doctor's tape and placed the seals. PW-5 corroborated the versions and additionally stated that the Investigating Officer SI Thakur Singh PW-7 interrogated the Appellants and effected arrest vide arrest memos Ex.PW5/A and Ex.PW5/B, after which they were medically examined. Thereafter, Akil led



the police party to his house and at his instance one coloured printer-cum-scanner, several currency notes of different denominations, markers, 165 pages of A-4 size etc. were recovered and seized vide seizure memo Ex.PW5/H, which bears the signature of PW-5 at point 'A'. Case property was thereafter deposited in the *Malkhana*.

23. PW-6 ASI Surender Pal Kaushik deposed that on 03.11.2017 he was posted at PS: Chandni Mahal. On the said day, PW-2 got the FIR registered and further investigation was handed over to PW-7. PW-6 had accompanied PW-7 and PW-5 to the spot, where custody of the Appellants was handed over to PW-7 and PW-2 handed over the sealed *pullandas* of seized currencies. Both Appellants were arrested by the Investigating Officer and on their personal search as well as on search of the house of Akil, counterfeit currency along with other articles was recovered and seized. PW-7 SI Thakur Singh corroborated the testimonies of the others both on the aspect of possession and recovery. PW-9 also corroborated the aforesaid testimonies and additionally deposed that he conducted a formal search of the Appellants on the instructions of PW-2 and the counterfeit currency notes were recovered from the Appellants. He correctly identified the Appellants and the case property. All the 4 witnesses were extensively cross-examined and the defence was unable to demolish or discredit their testimonies.

24. As noted above, prosecution was required to prove that the Appellants were in possession of the counterfeit notes with knowledge or reason to believe that the currency was fake, forged or counterfeited and they intended to use the same as genuine. Testimonies of PW-2, PW-3, PW-5, PW-6, PW-7 and PW-9 have been analysed and in my view, prosecution has established recovery of counterfeit currency notes from



both the Appellants as well as from the house of Akil. No contradiction has been pointed out in these depositions by the Appellants and on a careful perusal, none exists.

25. It is also seen from the evidence led by the prosecution that Appellants were apprehended in a crowded market place with huge number of counterfeit currency notes. In their statements under Section 313 Cr.P.C., the only defence taken by the Appellants was that nothing was recovered from their possession and recovery was planted upon them. Dealing with similar facts and circumstances, this Court in **Ram Prasad & Anr. v. State of NCT of Delhi, 2017 SCC OnLine Del 11788**, decided on 13.11.2017, observed as under:-

*“45. I do not find any substance in the contentions raised by learned counsel for the appellant that the ingredients of the offence punishable under Section 489C IPC are not established.*

*46. In order to bring the case within the ambit of Section 489C IPC, it has to be proved that the accused kept the counterfeit currency notes in their possession knowingly or having reason to believe the same to be counterfeit and intending to use the same as genuine. It is established from the evidence on record that appellant Kripa Shankar was apprehended in the market having in his possession 50 fake Indian currency notes of the denomination of Rs.100/- each and 500 fake Indian currency notes of the denomination of Rs.500/- each. Similarly huge number of fake currency notes were recovered from the other two appellants. In their statements under Section 313 Cr.P.C, the appellants have simply pleaded their false implication. They have neither taken the defence that they had no knowledge of the currency notes in their possession being fake nor have they explained as to how these currency notes came into their possession. In such cases as it is difficult to adduce direct evidence to establish the knowledge of the appellant, the Court can take into consideration the attending circumstances in order to arrive at the conclusion. The evidence of the prosecution is to the effect that at the time when appellant Vikas Chaudhary was apprehended, he was found in possession of a total of Rs. 2,99,000/- fake Indian currency notes and on his disclosure statement, appellant Kripa Shankar was apprehended from a market which led to the recovery of another Rs. 3 Lakhs fake Indian currency notes. If there had been any valid explanation with the appellants that they have come in possession of these currency notes, which are found to be fake innocently, they had all the liberty to disclose the same. All the appellants merely pleaded their false implication. Mere possession, in the*



*absence of explanation in that regard, would be sufficient to establish that the possession of these fake currency notes were consciously with the appellants.”*

26. It is also relevant in this context to allude to the observations of this Court in *Anis (supra)* as follows:-

*“14. This is not the case of the appellants that though the currency notes were in their possession, they did not know and had no reasons to believe that the same were counterfeit currency. This is also not their case that these currency notes were given to them by someone and they had accepted the same without suspecting them to be counterfeit currency. Their case is that these currency notes were not at all recovered from their possession. If a person found in possession of counterfeit currency, instead of giving any explanation for such counterfeit currency possession, chooses to altogether deny the possession and such a defence is found to be false, the inevitable inference is the he had reasons to believe that the currency notes recovered from him were counterfeit currency and that precisely was the reason why he is denying the recovery from him. The knowledge and intention are state of mind which cannot be proved by direct evidence and have to be inferred from the attending circumstances. Possession of counterfeit currency, coupled with denial of possession and no attempt to explain as to how the appellants came into possession of such currency is sufficient to infer the requisite knowledge and intention on the part of the appellants. No doubt, the fundamental principles of criminal jurisprudence is that it is for the prosecution to prove all the ingredients of the offence alleged to have been committed by the accused, but, when the prosecution has proved all that it could have and the circumstances proved by it point unerringly towards the guilt of the accused, in that case if there exists a fact which is only in the knowledge of the accused and that fact is compatible with his innocence, it is for the accused to bring such a fact in the notice of the court. In ‘Gajjan Singh v. State of Madhya Pradesh’, AIR 1965 SC 1921, the accused, who was travelling in a separate truck, was present when his truck in possession of the driver was checked and forged permit produced by his driver was seized. The conviction of the accused under Section 471 read with Section 474 of Penal Code, 1860 was upheld. I, therefore, hold that the prosecution has already been able to prove that the appellants knew or had reasons to believe that the currency notes found in their possession were counterfeit currency.”*

27. Applying the aforesaid observations to the facts of this case, prosecution has proved that Yasin was apprehended from the market place and from his possession, upon search of the right pocket of his *kurta* 100 currency notes of Rs.50/- denomination were recovered, bearing the same



number and likewise from Akil there was recovery of 102 currency notes of Rs.50/- denomination from the right pocket of his pants and 99 currency notes from the left pocket, bearing same numbers. It is settled that knowledge and intention are a state of mind which can generally be proved only through circumstantial evidence. Appellants have failed to furnish any justifiable or plausible explanation for being in possession of huge number of counterfeit currency notes, which they were entitled to furnish before the Trial Court. In fact, Appellants did not lead defence evidence. Complete denial of factum of recovery and non-explanation even in the statements under Section 313 Cr.P.C. with regard to source from where the currency notes were obtained, establishes the guilt of the Appellants. Testimonies of police officials, who recovered the counterfeit notes from the possession of the Appellants, are consistent and cogent and Appellants have been unable to dent their statements, apart from the fact that there is nothing in the cross-examinations of these witnesses, which could lead this Court to disbelieve their statements.

28. As regards the genuineness of the recovered currency notes, it is an admitted position that the recovered currency notes were sent to Currency Note Press, Nashik Road, Maharashtra and a report was rendered that the currency notes were not genuine but fake, after which supplementary charge sheet was filed. It is also an undisputed position that Appellants had admitted the FSL report Ex.PX/1. It is not the case of the Appellants even today that they did not know or had no reason to believe that the currency notes were counterfeit. Since the FSL report was admitted, no rebuttal evidence was led to question the expert opinion. The fact that Appellants were found in possession of large number of currency notes which have been proved through unrebutted expert opinion to be counterfeit and there



being no reasonable explanation from the Appellants to the source of the currency notes or the reason for possession, the offence under Section 489C IPC stands proved. In this context, I may refer to the decisions of the Madras High Court in *State of Mysore v. Sthapathi Nataranjan, 1971 Mad LJ (Cri) 400* and Calcutta High Court in *Ashu Mondal (supra)*. In the latter case the Appellant was found to be in possession of large number of counterfeit currency notes of different denominations, with no explanation regarding the possession. On seeing the police, he tried to escape but was caught. In the absence of any reasonable explanation tendered by the accused, the Court held that when a large number of counterfeit notes are recovered, it must give rise to a presumption that possession of such notes was for trafficking *albeit* the presumption was rebuttable and could have been rebutted but the accused was unable to lead any evidence in defence. In *Ponnusamy v. State, 1997 SCC (Cri) 217*, the Supreme Court observed that where the accused does not have an explanation to offer as to the source of the forged currency notes, silence would by itself be a telling circumstance against him.

29. Insofar as the offence under Section 489B IPC is concerned, prosecution has succeeded in proving that the counterfeit currency notes were recovered from the Appellants in huge numbers and therefore, as per Section 106 of the Evidence Act, the burden was on them to disclose the source of these notes. *Mens rea* which is an essential ingredient of Section 489B IPC can be gathered from the circumstance of recovery of huge currency from the Appellants, which also demonstrates their knowledge and reason to believe that the currency was counterfeit, particularly in the absence of any explanation of possessing such large volumes of notes with same numbers. It can also not be overlooked that the recovery of currency



notes was not only from their personal search but was also from the house of Akil and at his instance. Therefore, in my view, the learned Trial Court has correctly rendered a finding that both the Appellants had knowledge that the currency notes recovered from their possession were fake and the charge under Section 489B IPC was rightly held to be proved.

30. It was strenuously contended by counsel for the Appellants that all witnesses examined by the prosecution were interested witnesses being police officials and although the spot from where the alleged recovery was made and Appellants were apprehended was a crowded market place, no public witness was joined in investigation either at the stage of apprehending the Appellants or conducting their personal search. This argument in my view has no merit. It is a settled law that if the testimony of a police official is consistent and of sterling quality and does not give rise to any doubt or suspicion, it cannot be discarded merely on the ground that the witness belongs to a police force. In **Baldev Singh v. State of Haryana, (2015) 17 SCC 554**, the Supreme Court observed as under:-

*“10. There is no legal proposition that evidence of police officials unless supported by independent evidence is unworthy of acceptance. Evidence of police witnesses cannot be discarded merely on the ground that they belong to police force and interested in the investigation and their desire to see the success of the case. Prudence however requires that the evidence of police officials who are interested in the outcome of the result of the case needs to be carefully scrutinised and independently appreciated. Mere fact that they are police officials does not by itself give rise to any doubt about their creditworthiness.”*

31. In **Tahir v. State (Delhi), (1996) 3 SCC 338**, the Supreme Court observed that no infirmity attaches to the testimony of the police officials merely because they hold that position. In **Aner Raja Khima v. State of Saurashtra, AIR 1956 SC 217** the Supreme Court held that the presumption that a person acts honestly and legally applies as much in



favour of police officers as to others. It is not proper and permissible to doubt the evidence of police officers unless strong reasons exist to do so. Judicial approach must not be to distrust and suspect their evidence without good and sufficient reasons. I may also allude to the judgment of the Supreme Court in *Om Parkash v. The State, 1982 Cri. L.J. 751*.

32. In the present case, nothing has been brought on record before the Trial Court to show that the prosecution witnesses had an enmity with or ill-will towards the Appellants so as to depose falsely to implicate them in a false case. Their evidence cannot be discarded merely because the prosecution witnesses were police officials. Insofar as the contention of non-joining of public witnesses is concerned, it is a hard reality that public does not want to be dragged into criminal cases and/or other matters involving the police for reasons of long drawn trials, unnecessary harassment etc. In *Appabhai and Another v. State of Gujarat, AIR 1988 SC 696*, the Supreme Court observed that prosecution case cannot be thrown out only on the ground that independent witnesses were not examined. It was also observed that people are generally insensitive when a crime is committed even in their presence and like to keep themselves away from the Courts unless inevitable. It is pertinent to mention that PW-9 had stated that efforts were made by PW-2 to join the public persons but none agreed and left the spot by stating that they had some urgent work. Therefore, merely because independent witnesses were not associated and/or examined by the prosecution cannot itself be a ground to render the testimonies of the police witnesses unworthy of credence or create a dent in the prosecution case.

33. It was also argued on behalf of the Appellants that the prosecution witnesses had deposed that the recovered counterfeit notes were put into



plastic boxes but DD Entry No.18 (Ex.PW2/PX-1) does not contain any endorsement that PW-2 was carrying an IO kit and this strikes at the root of the prosecution case. Heavy reliance was placed in this context on several judgments, as aforementioned. This argument also in my view has no legs to stand in light of the testimony of PW-2, who deposed that he was carrying the IO kit with him at the relevant time while leaving for patrolling duty and the plastic boxes were a part of the kit, although, he conceded that the DD entry did not mention this fact. PW-3, PW-5 and PW-9 corroborated the testimony of PW-2 and deposed that he was carrying the plastic boxes as part of the IO kit. It was also testified that plastic boxes were not issued to PW-2, but he used to purchase them and keep the same in his kit. The judgment in *Diwakar (supra)* relied upon by the Appellants, will not enure to their advantage. In the said case, the Court had found that there was no mention in the daily diary entry that the patrolling party had gone carrying the IO kit but, what is noticeable is that in the said case, the Court had also taken a note of the crucial fact that none of the police officials had stated that they had carried the IO kit from the police station and this rendered the prosecution story doubtful, if not false. Contrary to the said facts, in the present case PW-2 categorically deposed that he was carrying the IO kit and his testimony was fully corroborated by 3 other prosecution witnesses.

34. Learned counsel for the Appellants had laid stress on the definition of the expression 'Counterfeit' to contend that the quality/nature of the notes was such that they could not deceive any prudent person and to support this plea, he had pointed out differences in the recovered notes with the original notes in their length and width, thickness and texture, absence of security features and watermark etc. In a nutshell, the argument is that a



bare look at the currency notes would show that they were not meant for use as genuine notes. In ***K. Hashim (supra)***, the Supreme Court while dealing with the word ‘Counterfeiting’ in Section 28 IPC observed that if one thing is made to resemble another thing and the intention is that by such resemblance deception would be practised or even if there is no intention but it is known to be likely that the resemblance is such that deception will thereby be practised, there is counterfeiting. There is no necessity of importing words like “colourable imitation”. In order to apply Section 28, what the court has to see is whether one thing is made to resemble another thing and if that is so and if the resemblance is such that a person might be deceived by it, there will be a presumption of the necessary intention or knowledge to make the thing counterfeit, unless the contrary is proved. “Counterfeit” in Section 28 does not connote an exact reproduction of the original counterfeited. Explanation 2 of Section 28 is of great significance. It lays down a rebuttable presumption where resemblance is such that a person might be deceived thereby. In such a case the intention or the knowledge is presumed unless the contrary is proved. Relying on these observations of the Supreme Court while dealing with an identical argument raised on behalf of the Appellant, the Rajasthan High Court in ***Liyakat Ali v. State of Rajasthan, 2009 SCC OnLine Raj 2693***, observed as follows:-

*“16. An argument has been raised that from the very look at the currency notes according to India Security Press, Nasik, the notes produced before them suffered a number of defects, as such it should be held that they were prepared for fancy purpose. The argument is fantastic. The very existence of the fake notes amounting to lakhs and lakhs rupees indicate that all the accused under a criminal conspiracy for bent upon selling and introducing the fake notes in the market. This case is governed by the case *K. Hashim v. State of Tamil Nadu* reported in (2005) 1 SCC 237 : AIR (2005) 1 SCC 237, the fact and ratio descendi of the case of *K. Hashim* noted *supra* at verbatim with necessary changes in nomenclature*



*applies to the facts of this case. By credible, cogent and reliable evidence tender the invertible conclusion is that the appellants have been rightly convicted and sentenced under various sections. The sentence as imposed do not warrant interference, particularly in view of the object for which the Section 489-A, 489-B, 489-C, 489-D and 120-B of the IPC have been enacted.”*

35. In the present case, it bears repetition to state that huge quantity of counterfeit notes was recovered from the Appellants, which clearly indicates their intention to use and sell fake notes in the market. Prosecution evidence also established recovery of counterfeit notes from the house of Akil along with articles such as computer, markers, A-4 sheets with notes, without cutting etc. Moreover, the Supreme Court in ***State of Uttar Pradesh v. Hafiz Jawed Ali and Anr., (1960) 2 SCR 911***, held that exact imitation is not essential under Section 28 IPC.

36. Somewhat connected to this argument is the last plank of the arguments on behalf of the Appellants that no question was put to them during recording of the Statement of Accused under Section 313 Cr.P.C. that the currency notes were fake. This contention has no legs to stand in view of Explanation-2 to Section 28 IPC, which is extracted hereunder for ready reference:-

*“28. Counterfeit.*

xxx

xxx

xxx

*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.”*

37. It is a settled law that counterfeit need not be an exact imitation. In the present case, the argument that no question was put to them under Section 313 Cr.P.C. cannot be accepted for more than one reason. Firstly,



there is recovery of large quantity of counterfeit notes and secondly, the issue of non-compliance of Section 313 Cr.P.C. was not taken up by the Appellants before the Trial Court. The Supreme Court in *Shobhit Chamar and Another v. State of Bihar, (1998) 3 SCC 455*, while dealing with a similar argument held that challenge to a conviction based on non-compliance of Section 313 Cr.P.C. cannot be taken up for the first time in appeal unless it is shown the Appellant has suffered some kind of prejudice. Record shows that questions were put to the Appellants on the recovery of the counterfeit currency notes by PW-2, in the presence of other members of the police party and their being seized and sealed in plastic boxes and the answer by each of the Appellants was "I do not know". The questions clearly incriminated the Appellants of dealing with counterfeit currency. Moreover, Appellants have failed to make any prejudice suffered by them and/or sufficient ground for not taking up this plea before the Trial Court.

38. In light of the above discussion and analysis, it is found that there is a direct link of the Appellants with the commission of the offences, which the prosecution has established beyond reasonable doubt. No ground has been made out by the Appellants to interfere and set aside a well-reasoned judgment of the Trial Court, based on evidence, both oral and documentary. Nothing was argued on behalf of the Appellants on the quantum of sentence. Under these circumstances, the appeals are dismissed being devoid of merits and the conviction and sentence are upheld.

39. Copy of this judgment be sent to the concerned Jail Superintendent for information.

**JYOTI SINGH, J**

**APRIL 22, 2024**

Signature Not Verified

Digitally Signed  
By: KAMAL KUMAR  
Signing Date: 01.05.2024  
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CRL.A. 117/2022 & 141/2022