



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

CRIMINAL APPEAL NO. 201 OF 2005

Suresh S/o. Deorao Mhaske,
Age : 32 Years, Occu. : Labourer,
R/o. Bhimnagar, Bhavsingpura,
Aurangabad.

..... Appellant
(Ori. Accused No.1)

Versus

The State of Maharashtra

..... Respondent

.....

Advocate for Appellant : Mr. Prashant Shinde h/f Mr. S.G. Shinde.
APP for Respondent-State : Mr. D.R. Korade

.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 13 December, 2024

PRONOUNCED ON : 03 January, 2025

JUDGMENT :

1. Instant appeal arises out of judgment and order dated 18.03.2005, passed by learned Ist Ad-hoc Additional Sessions Judge, Aurangabad, in Sessions Case No.20/2005, recording guilt of the present appellant for offence punishable under Section 489-C of the Indian Penal Code (hereinafter shortly referred to as "IPC").

IN NUTSHELL, CASE OF THE PROSECUTION IS AS UNDER :

2. Police Station Kranti Chowk, Aurangabad charge-sheeted the present appellant alleging that, secret information was received that the appellant is in possession of counterfeit and fake currency notes and he is about to circulate said notes in the market. On receipt of said information, PW2 Police Inspector, P.S. Kranti Chowk i.e. Informant, planned and arranged trap on 04.07.2004, near Samta Nagar Chowk, Aurangabad. PW2 Informant caught the appellant and in his body search, he was found to be in possession of 19 currency notes of Rs.100/- each, in his pant pocket. Same were seized vide panchnama and thereafter, PW2 Informant lodged the report and on the basis of which, Crime No.182/2004 was registered against the appellant. He himself carried out investigation and after gathering evidence, he charge-sheeted the appellant.

3. The appellant was tried by 1st Ad-hoc Additional Sessions Judge, Aurangabad vide Sessions Case No.20/2005, for offences punishable under Sections 489-A, 489-C & 489-D of the IPC. On complete appreciation and analysis of the evidence, learned trial Judge by his judgment and order dated 18.03.2005, held the appellant guilty, but only for offence punishable under Section 489-C of the IPC and sentenced him to rigorous imprisonment for five years and to pay fine.

4. It is the above judgment which is now taken exception to by filing instant appeal.

SUBMISSIONS

ON BEHALF OF THE APPELLANT :

5. Learned counsel for the appellant would point out that, there is false implication. He questioned the very story of prosecution on several grounds mentioned in the appeal memo. Learned counsel would further point out that, PW2 informant/police officer claims about receipt of secret information and thereafter, laying of trap and apprehended the appellant. According to him, at the outset, it was not verified either by Investigating Officer or even by learned trial court as to whether the appellant himself had knowledge that the currency in his possession was at all fake.

6. Learned counsel submitted that, it has not been appreciated whether there was any intention or attempt even to use currency or to give it for circulation and as such, according to him, both essential ingredients for attracting the charges were patently missing.

7. Learned counsel further submitted that, entire case of the prosecution is rested on four witnesses. There is no independent

witness. Only one independent witness is spot panch. He pointed out that, apparently, Investigating Officer and informant claims that currency was found to be kept in the watch pocket inside the pant. Therefore, it is his submission that, the appellant had kept currency in said pocket, because the same were genuine and according to him, had it been fake or counterfeit, he would not have preserved it and would have rather kept in shirt pocket or front pocket of the pant. He also took this court through the evidence of PW4 Investigating Officer, who was cross-examined, and submitted that, case is not proved beyond reasonable doubt. That, prosecution claims that money was intended to be circulated by using it in a shop, but no shopkeeper is examined.

8. For all above reasons, learned counsel submits that, as essential ingredients for attracting offence under Section 489-C of the IPC not being available, conviction ought not to have been recorded by the trial court. In support of above submissions, he seeks reliance on the judgment of the Hon'ble Apex Court in the following cases :

- i) ***M. Mammutti Vs. State Of Karnataka, reported in AIR 1979 SC 1705.***
- ii) ***Palanisamy Vs. State Represented by Inspector of Police, reported in 2023 Live Law (SC) Page 643.***
- iii) ***Umashankar Vs. State of Chattisgarh, reported in AIR 2001 SC 3074.***

ON BEHALF OF THE RESPONDENT-STATE :

9. In answer to above, learned APP for the respondent-State, while supporting the judgment of conviction, pointed out that, secret information was received by PW2 informant, who planned and arranged trap and apprehended the appellant and he was found to be in possession of currency notes. That, said currency notes were got checked through Security Press and even through cashier of bank from the special machine, which revealed that the currency notes were fake and counterfeit. Thus, according to learned APP, the appellant was in a conscious possession of fake currency notes.

10. Learned APP further pointed out that, before the appellant could use fake currency notes, he was apprehended. That, in presence of two panchas, said currency notes were seized. He had not put any defense nor given any plausible explanation while answering to statement recorded under Section 313 of Cr.P.C. That, evidence of prosecution was convincing. The evidence of PW2 informant and PW4 Investigating Officer has remained intact and therefore, prayers are made for dismissing the appeal for want of merits.

EVIDENCE BEFORE THE TRIAL COURT :

11. In support of its case, the prosecution has examined in all four witnesses. Their role and status and the sum and substance of their evidence can be summarized as under :

PW1 Mr. Ramdas Santaram Gaikwad, Police Head Constable, Police Station Kranti Chowk. In his substantive evidence at Exhibit 15, para.2 narrated as under :

“2. At the said place, in presence of panchas, the person of said person/accused No.1 was searched. And we found that, he was having 19 currency notes of Rs.100/- each denomination, in his pocket. On inquiry by Chate, PI, the said person gave his name as Suresh Deorao Mhaske, r/o Bhavsingpura, Aurangabad. On further inquiry by Chate, PI, accused No 1 gave the names of his four colleagues, by name—Shakti Bhise, Subhash Bhise, Pandit Narwade and one more. At the spot only, a separate panchanama was drawn, by which 19 currency notes, found with accused No.1, were attached. Accused No 1 alongwith the currency notes was brought to Kranti Chauk PS.”

PW2 Informant Dr. Kanchankumar Dashrathrao Chate, Police Inspector, Police Station Kranti Chowk. Relevant portion of his evidence at Exhibit 18 is as under :

“1. On 4-7-2004, I was working as Sr. P.I. At Kranti Chauk P.S. On that day, at about 7 p.m., I received a secret

information that, a person by name Suresh Deorao Mhaske is trying to deliver a forged currency note to a grocery shopkeeper in Samta Nagar Chauk, Aurangabad. I immediately called the two panchas by name Sk Jakir and Syed Mois to the P.S. I gave this secret information to both these panchas and also to my staff-members and also have given the instructions, as to what is to be done. Thereafter, myself alongwith the two panchas API Kale, informant and other police-staff, went to Samtanagar by walk. On reaching to Samtanagar chauk, from a distance, the informant pointed out the person concerned, i.e. Suresh. Thereafter, myself, with the help of my staff, had caught the said person, at that spot and it was at about 7-30 p.m. Thereafter, I introduced myself, so also the two panchas, to said Suresh. And we asked his name, place of residence etc. He gave his name-as Suresh Deorao Mhaske, r/o Bhimnagar, Bhavsingpura, Aurangabad. I disclosed him the intention to apprehend him.

2. At the same spot, in presence of the two panchas, the person of Suresh was searched. In the search, in the inner pocket of his pant, nineteen currency notes of Rs.100/- each denomination were found. I also found with him a visiting card and two chits giving two different names. Having some writings thereon. All these articles were taken in possession by me from him, by drawing a detailed panchanama of it. The panchanama is signed by both the panchas, so also said Suresh. The currency notes were kept in an envelope, in the inner pocket of the pant and the signatures of panchas were also obtained on that envelope. I identify the panchanama now

shown to me, which bears the signatures of the two panchas and accused and also of myself. The contents of panchanama are true and correct and it is marked at Exh.19. The numbers of the currency notes, which were found with said Suresh, also mentioned in the panchanama. I identify the nineteen currency notes now shown to me, the Nos. of which are mentioned in the panchanama. I also identify the signatures of myself and panchas on the brown-coloured enveloped, in which the nineteen currency notes were found with Suresh. The witness was shown the currency notes and the envelope, having a lable of panchas' signatures, marked as Article No.1 before the court and he identified these articles. Thereafter alongwith this attached property, the accused, the panchas and my staff, returned to the Kranti Chauk P.S. Aurangabad.

3. In the P.S., I interrogated the accused about his colleagues and he gave the names of his five colleagues, which are mentioned in complaint, which I lodged. I lodged the complaint in behalf of the State against the six accused, named in the complaint. The contents of the complaint are true and I identify my signature thereon and it is marked at Exh.20.....”

PW3 Syed Moin Syed Majjid, pancha to the seizure panchnama, who examined at Exh.21 narrated that, in his presence, search was conducted and the appellant was found to be in possession of 19 currency notes i.e. in his pant pocket and said currency notes were seized and kept in brown envelope and he caused signatures over panchanamas as well as envelope.

PW4 Investigating Officer Mr. Vidyanand Murlidhar Kale, Assistant Police Inspector, Kranti Chowk Police Station. In his substantive evidence at Exhibit 28, para.1 narrated as under :

“1. On 4-7-2004, I was working as API at Kranti Chauk PS, Aurangabad. On that day, at about 7 p.m. I was in the cabin of pw2 Chate, PI, and the informant had come to Chate in the cabin. The informant gave the information to PI-chate that, in Samtanagar Chauk, one person is trying to dispose off the forge-currency-notes. Chate, PI, ascertained for himself the correctness of the information and then called the two panchas and other staff of P.S. Thereafter, alongwith informant, and the two panchas. Myself, Chate, PI, and our staff went to Samtanagar Chauk by walk. The informant, from the distance, pointed out the person to me & Chate, PI and that person was caught at the spot. On inquiry, the said person gave his names Suresh Mhaske. When his person was searched, in the pocket of his pant, 19 currency notes of Rs.100/- each denomination were found. Besides that, visiting-card, a diary and a chit also were found with him. In presence of the two panchas, at the same place, those currency notes and other articles were attached by drawing the panchanama there. After drawing the panchanama, we all alongwith the said person returned to Kranti Chauk PS. Chate, PI, lodged the complaint and also registered the offence No. 182/2004 and its investigation was entrusted to me.”

ANALYSIS

CHARGE UNDER SECTION 489-C OF IPC :

12. Section 489-C of IPC, for ready reference, is reproduced as under :

“489C. 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. On complete re-appreciation of evidence, more particularly, that of PW2 informant and PW4 Investigating Officer, who were police officers and have carried out the investigation, it is revealed that, on secret information, trap was laid in Samata Nagar Chowk and the appellant was apprehended and in his body search, he was found to be in possession of 19 currency notes of Rs.100/- each. Same were seized in presence of independent panch i.e. PW3 Syed Moin, who has supported the prosecution.

14. As regards to genuineness of currency is concerned, it has come in the evidence of PW4 Investigating Officer that, on

06.07.2004, attached currencies were confronted to cashier of State Bank of Hyderabad, who, on examination, declared the same to be counterfeit and forged. Even currencies were referred to Security Press, Nashik and its report is received, which is marked as Exh.27. The said report from Currency Press shows that currencies were counterfeit and forged.

15. Obviously, when investigation was carried out on secret information, there cannot be independent witnesses. However, here, PW3 Syed Moin i.e. pancha to the seizure panchanama, is independent witness and he has supported the prosecution. It is pertinent to note that, the accused/appellant has not refuted or denied that he was not at all in possession of currencies. Stand taken by the accused/appellant vide statement recorded under Section 313 of Cr.P.C. is that, he was not aware and that, he had no knowledge that the same were counterfeit. However, as pointed out by learned APP, appellant was in a conscious possession of the counterfeit notes. Security Press has declared the same to be counterfeit. Essential ingredients for attracting Section 489-C of IPC are patently available i.e. possession of forged and counterfeit currency. There is evidence to that extent.

16. Therefore, on complete re-appreciation of evidence, this court do not find any infirmity in the manner of appreciation at the hands of learned trial court. Except making submission that there is improper appreciation on the aspect of knowledge about currency to be fake, there is no other convincing ground raised in the appeal. As stated above, the accused/appellant was apprehended while he was in possession of counterfeit currency and he offered no explanation for the same. Therefore, the appeal being devoid of merits, I proceed to pass following order.

ORDER

The criminal appeal is hereby dismissed.

[ABHAY S. WAGHWASE, J.]

ASD