



(1)

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

CRIMINAL APPEAL NO. 612 OF 2002

Malhari s/o Bhummyya Antarwar,
Age: 30 years, Occ: Private Service,
R/o : Badur, Taluka : Nilanga,
District : Latur

....APPELLANT

VERSUS

The State of Maharashtra

....RESPONDENT

.....

Mr Prashant P. Sukale, Advocate for Appellant
Ms U. S. Bhosale, APP for Respondent/State

.....

CORAM : SUSHIL M. GHODESWAR, J.

**RESERVED ON : 06 NOVEMBER 2025
PRONOUNCED ON : 18 NOVEMBER 2025**

JUDGMENT :-

1. By this appeal, the appellant is praying for quashing and setting aside the Judgment and order dated 19/09/2002, passed by the learned Additional Sessions Judge, Latur, District Latur, in Sessions Case No.18/2002, by which the appellant was convicted under Section 248(2) of the Code of Criminal procedure for the offences punishable under Section 489-B of the Indian Penal Code and sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.500/-. In

(2)

default of payment of fine, he was sentenced to undergo rigorous imprisonment for fifteen days. Further, he was convicted for the offences punishable under Section 489-C of the Indian Penal Code and sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.500/-. In default of payment of fine, he was sentenced to undergo rigorous imprisonment for fifteen days. All the sentences were directed to be run concurrently.

2. The case of the prosecution is that PW-3/ Ezaz is running departmental shop, namely, Fine Departmental Stores at Barshi Road, Latur. On 24/03/2001, the appellant/accused came to his shop and gave him a currency note of Rs.100/- and demanded its change. PW-3 doubted about the genuineness of the said currency note. He, therefore, asked the appellant from where he brought the said currency note. PW-3 called the police about the said currency note. Thereafter, Police arrived in his shop. PW-3 gave that note to the police. In search of the appellant by the P.S.O. in presence of panchas, another fake currency note of Rs.100/- was found in the pocket of the appellant. Police recorded seizure panchnama of the said notes. PW-5/ Shri. Dere, P.S.I. brought the accused in Police Station and lodged report against him vide Exhibit-17, stating therein that appellant was having two fake currency notes of Rs.100/-. Accordingly, PW-5

(3)

registered the offence vide Crime No.33/2001 under Sections 489-B and 489-C of the Indian Penal Code against the appellant and initiated investigation. During the investigation, it was found that another accused, namely, Venkatesh also assisted the appellant to use the forged currency notes of Rs.100/-, and therefore, his name also inserted in the FIR. During the investigation, it was found that both the accused, in furtherance of common intention, were having forged or counterfeit notes of Rs.100/- denomination and they were intended to use the same as genuine. After completion of investigation, charge-sheet came to be filed against the accused for the offence punishable under Sections 489-B and 489-C read with Section 34 of the Indian Penal Code in the Sessions Court.

3. Vide Exhibit-2, charge came to be framed against the accused persons for the offence punishable under Section 489-B and 489-C read with Section 34 of the Indian Penal Code. They pleaded not guilty and therefore they were tried by the Sessions Court. The learned Sessions Court acquitted the co-accused Venkatesh whereas the present appellant was convicted for the offence punishable under Section 489-B of the Indian Penal Code and sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.500/-. In default of payment of fine, he was sentenced to undergo rigorous

(4)

imprisonment for fifteen days. Further, he was convicted for the offences punishable under Section 489-C of the Indian Penal Code and sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.500/-. In default of payment of fine, he was sentenced to undergo rigorous imprisonment for fifteen days.

4. The prosecution, in order to prove offences against the accused, have examined five witnesses. PW-1/Shivaji Shankarrao Suryawanshi, Police Head Constable at MIDC Police Station, Tq. and Dist. Latur was examined at Exhibit-9, who deposed that PSI Dere informed him that one person came in Fine Departmental Stores, Latur with counterfeit currency note. Accordingly, he went to the spot alongwith PW-5. He further deposed that in front of him, personal search of appellant was taken and another fake currency note of Rs.100/- was found in the pocket of shirt of the appellant. PW-2/Rajabhau Shankar Rajnale, who was panch witness No.2 and was present at the spot during seizure panchnama and personal search of the appellant, was examined at Exhibit-10. PW-3/Ezaz Ahmed Abdul Gaffar Pathan, shop keeper of Fine Departmental Stores, who informed the police as regards the incident, was examined at Exhibit-14. PW-4/Rafiq Isaq Shaikh was Police Constable of MIDC Police Station, Latur, who had arrested the appellant, was examined at

(5)

Exhibit-15. Lastly, the prosecution examined PW-5/Madhav Parbatrao Dere, PSI of Police Station, Latur at Exhibit-16, who had conducted the investigation and filed charge-sheet against the accused persons.

5. Heard learned Advocate Mr Prashant Sukale for the appellant and Ms Bhosale, learned APP for respondent/State.

6. Mr Sukale, learned Advocate for the appellant submits that the judgment and order of the learned Sessions Court is illegal and improper. He then submits that the story of the prosecution is false and imaginary. He further submits that the evidence brought by the prosecution before the Sessions Court is insufficient and not clear, in order to prove the offence against the appellant beyond reasonable doubt. He further submits that the Investigating Officer miserably failed to bring before the Court that the appellant was having knowledge of the said currency note being counterfeit currency. He further argued that the prosecution has also failed to prove that there was intention on the part of appellant having known the said counterfeit currency note to use in the market to gain profit. He has taken this Court through the evidence of all the witnesses. According to him, the main aspect in order to prove charges under Sections 489-B and 489-C of the Indian Penal Code is insufficient to prove that the accused was having knowledge that the said currency note was

(6)

counterfeit and he was intended to use the same as a genuine note in order to gain profit. Thus, according to him, the prosecution having failed to bring aforesaid primary aspect of the offence, the charge under Section 489-B and 489-C of the Indian Penal Code cannot be proved against the appellant. He relies upon following two judgments in support of his submissions :-

(I) Umashanker Vs. State of Chhattisgarh, AIR 2001 Supreme Court 3074, and

(II) Abdul Majeed Abdul Rehman Sarkhot Vs. State of Maharashtra, 2002 Cri. L.J. 720.

7. Per contra, learned APP Ms Bhosale strongly opposes the appeal by contending that the prosecution has sufficiently proved the charges against the appellant by bringing clear evidence before the learned Sessions Court. According to her, the appellant had caught red handed and found possessing counterfeit currency note, which is sufficient to prove the charges of offences under Sections 489-B and 489-C of the Indian Penal Code against him. According to her, the witnesses have corroborated with each other and there was consistency in their submissions. Thus, she submits that, on the contrary, the defence has virtually failed to destroy the said evidence brought before

(7)

the learned Sessions Court. She, therefore, supports the order of the learned Sessions Court and prays for dismissal of the instant appeal.

8. After considering the aforesaid submissions advanced by the respective sides and going through the record, it is found that the prosecution is trying to prove the charges under Section 489-B and 489-C of the Indian Penal Code against the appellant. The offence in respect of forged or counterfeit currency notes under Section 489-B and 489-C discloses that the appellant or accused knowing or having reason to believe that the currency or bank notes are counterfeit for use the same in order to gain profit. Mere possession or recovery of the said counterfeit currency notes is not sufficient to make out a case under Sections 489-B and 489-C of the Indian Penal Code in absence of *mens rea*. The *mens rea* is therefore essential factor for the purpose of said offence under Sections 489-B and 489-C of the Indian Penal Code. Without the aforesaid *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 Sections 489-B of the Indian Penal Code. 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 Sections 489-C of the Indian Penal Code in absence of the *mens rea*

noted above. As the prosecution has not brought on record to show that the appellant has requisite *mens rea*, in my opinion, the charges framed under Sections 489-B and 489-C of the Indian Penal Code are not proved against the appellant and the appellant has made out case.

9. Consequently, this appeal is allowed. The order dated 19/09/2002, passed by the learned Additional Sessions Judge, Latur, District Latur, in Sessions Case No.18/2002 is hereby set aside. The conviction and sentence of the appellant under Sections 489-B and 489-C of the Indian Penal Code is hereby set aside and the appellant is acquitted of the charges framed against him. The bail bond stands cancelled. Surety, if any, stands discharged. Fine amount, if deposited, be refunded. The Record and Proceedings be sent back to the concerned Court.

[SUSHIL M. GHODESWAR, J.]

sjk