F. R.

IN THE HIGH COURT OF SIKKIM AT GANGTOK

Crl. A. No.1 of 2008

Panna Lal Gupta,
S/o Late angina Ram Gupta,
R/o Jorethang Bazar,
South Sikkim. ..... Appellant

versus

State of Sikkim ..... Respondent

For appellant : Mr. A. Moulik, Senior Advocate with Mr. B. K. Gupta, Advocate.

For Respondent : Mr. J. B. Pradhan, Public Prosecutor with Mr. Karma Thinlay, Additional Public Prosecutor and Mr. S. K. Chhetri, Assistant Public Prosecutor.

Date of Hearing : ***02.09.2009***

Date of Judgment : ***02.09.2009***

PRESENT: HON'BLE THE CHIEF JUSTICE
MR. JUSTICE AFTAB H. SAIKIA
HON'BLE MR. JUSTICE A.P. SUBBA, JUDGE

JUDGMENT AND ORDER (ORAL)

Saikia, CJ

Heard Mr. A. Moulik, learned senior counsel assisted by Mr. B. K. Gupta, learned counsel for the appellant. Also heard Mr. J. B. Pradhan, learned Public Prosecutor with Mr. Karma Thinlay,

learned Additional Public Prosecutor and Mr. S. K. Chhetri, learned Assistant Public Prosecutor for the State.

2. This criminal appeal is directed against the judgment and order dated 30-07-2008 passed by the learned Sessions Judge (South & West), Namchi in Sessions Trial Case No.22 of 2005 whereby the appellant has been convicted under Sections 489B and 489C of the Indian Penal Code (in short 'IPC') and sentenced to undergo imprisonment for 2 years and 6 months and to pay a fine of Rs.35,000/- (Rupees thirty five thousand) under section 489B of the IPC and to pay a fine of Rs.15,000/- (Rupees fifteen thousand) under section 489C.

3. The facts of the case in brief as unfolded by the prosecution may briefly be stated as follows:-

One Shri Gulam Singh Rai (PW2) of Baiguney Busty in South Sikkim accompanied by his aunty Maity Rani Rai (PW3) came to Jorethang Bazar in South Sikkim for the purpose of pawning an item of gold jewelleary called "Maitighar" belonging to Smt. Nar Maya Rai (PW4) with a pawnbroker in order to raise some cash money for making some purchase on the occasion of his brother's wedding. After reaching Jorethang Bazar they pawned the gold jewellery with the pawnbroker, i.e., the accused-appellant and obtained cash of Rs.2,000/- in the denomination rupees one

hundred currency-notes and proceeded to the market for making purchases. As they purchased a Jeans Pant and were delivering Rs.200/- in the denomination of rupees one hundred to the shopkeeper as price for the Jeans Pant one Bhanu Bhakta Pradhan (PW5) who happened to be present there, saw the currency-notes and told them that the currency-notes look like fake notes and enquired as to wherefrom they had got the currency-notes. Upon such enquiry, they disclosed that they had got the currency-notes in question from the shop of the appellant and thereafter both of them accompanied by the other person, i.e., (PW5) came to the shop of the appellant and from there they proceeded to the police station where they surrendered the currency notes and made a verbal complaint. The verbal complaint so made to the O.C. Jorethang Police Station was reduced into writing and was signed by Gulam Singh Rai (PW2).

4. On the basis of the complaint, a case under Sections 489B and 489C IPC was registered against the appellant and investigation was taken up. In the course of the investigation, the appellant was arrested and the 22 numbers of suspected fake notes of hundred rupees denomination and a torn seal/sticker of State Bank of India, Tadong Branch, Gangtok were seized. In the course of such further investigation, the gold jewellery (Maitighar Gold) in question was seized and the suspected fake currency-notes were

sent to CFSL, Kolkata for forensic examination. The interrogation of the accused was also carried out and on receipt of report from CFSL Kolkata which was positive, a charge sheet under Sections 489B and 489C IPC was submitted against the appellant.

5. During the trial, the prosecution examined as many as 13 witnesses which included 2 official witnesses, namely, PW5 Bhanu Bhakta Pradhan as an expert on currency notes and PW13 PI C. Chopel, the Investigating Officer (for short, 'I.O.'). Defence examined none.

6. The learned Sessions Judge on consideration of testimony of the witnesses who were examined by the prosecution and other materials on record as well as upon hearing of the learned counsel for the accused-appellant and the learned Public Prosecutor came to the conclusion that the prosecution had been able to prove the case beyond reasonable doubt and accordingly, convicted the accused and sentenced him as already indicated above.

7. Mr. Moulik, learned senior counsel for the appellant, challenging the impugned conviction and sentence, has initiated his arguments by claiming vehemently that the learned Sessions Judge committed error of law in interpreting the provisions of law as contained in Sections 489B and 489C of the IPC. According to

him, the prosecution had totally failed to prove the essential ingredients of the offences under Sections 489B and 489C of the IPC inasmuch as there were no convincing materials available on record to constitute the offences under those Sections against the appellant. Even the testimony of the witnesses so projected by the prosecution could not disclose the involvement of the appellant in the commission of the offences under the charged sections beyond reasonable doubt.

8. Supporting the conviction and sentence, Mr. Pradhan, learned Public Prosecutor, on the other hand, has strenuously contended that the prosecution has proved through all its key witnesses particularly, PW1 B. Manna, PW2 Gulam Singh Rai, PW3 Maita Rani Rai, PW5 Bhanu Bhakta Pradhan, PW8 Prithvi Nath Singh, PW12 T. B. Rai and PW13 PI C. Chopel/Police Inspector, the I.O., its case against the appellant and it has been successful in bringing home the guilt of the appellant under the above-mentioned Sections beyond reasonable doubt. Further, he has also urged that the evidence of all the witnesses so examined by the prosecution inspired confidence and there is no scope to disbelieve and distrust the testimony of those witnesses. Under such circumstances, it is submitted that the trial Court was justified and correct in convicting and sentencing the appellant under the Sections as mentioned above.

9. In order to appreciate the rival contentions of the parties, it is necessary and desirable to refer to the provisions of law contemplated under those two Sections i.e., Sections 489B and 489C IPC. For the sake of convenience, the two Sections are quoted as under:-

> **"489B. 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.
>
> **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."

10. An ordinary reading of both the above quoted sections would go to show that to constitute an offence under Section 489B, following essential ingredients are necessary:

(1) The note in question is a currency-note or a bank-note;

(2) It was forged or counterfeited;

(3) The accused sold to, or bought from, or received it from any person;

(4) That the accused knew or had reason to believe it to be forged or counterfeited.

Similarly, the ingredients which are required to constitute an offence under Section 489C are as follows:

(1) The note in question is a currency-note or bank-note;
(2) Such note was forged or counterfeited;
(3) The accused was in possession of the currency-note or bank-note;
(4) The accused intended to use the same as genuine;
(5) The accused knew or had reason to believe the note to be forged.

11. Basically it is stipulated in above provisions of law that the accused who is in possession of the alleged forged or counterfeit currency-notes knew or had reason to believe that those currency-notes to be forged. The offences under those Sections can only made out when the accused knows that the counterfeit notes he possessed are forged or counterfeited and those are intentionally used as genuine.

12. A conjoint reading of both the above provisions of law would go to show that mere possession of the currency-note will not be sufficient to constitute the offence described under those Sections. Both the Sections clearly indicate that a person who possesses such forged or counterfeit currency-note or bank-note

must have the knowledge or have the reason to believe that the said currency-note or bank-note are forged or counterfeit in order to fasten criminal liability against him. In other words, the accused must possess and sell or buy or receive or use as genuine, any forged or counterfeit currency-note or bank-note, "knowing or having reason to believe the same to be forged or counterfeit".

13. Mr. Moulik, has, referring to the above-mentioned essential ingredients of the offences under Sections 489B and 489C of the IPC, vehemently contended that none of the essential ingredients of the offences under Sections 489B and 489C are available and present in the instant case.

14. Drawing our attention to the testimony of PW2 Gulam Singh Rai and PW5 Bhanu Bhakta Pradhan, the learned senior counsel has argued that PW5 could suspect the currency-notes in question to be false as he was a constable of Special Branch of Sikkim Police and an expert. This witness (PW5) himself said that one of his duties was to detect the fake currency-note. According to him, he suspected the currency-notes to be fake notes as they appeared to be dissimilar to genuine note. But mere suspicion, as deposed by PW 5, cannot constitute an offence under the relevant Sections in question.

15. The learned senior counsel has also drawn our attention to the evidence of PW12 T. B. Rai, the Deputy Superintendent of Police of the Jorethang Police Station. According to this witness, he had on the same date, i.e., 1-2-2004 raided the Jewellery Shop of the appellant and recovered a total cash of Rs.2,000/- which comprised of 20 numbers of one hundred rupees currency-notes and out of those 20 currency-notes he found 2 currency-notes of hundred rupees denomination to be fake currency-notes.

16. Mr. Moulik, the learned senior counsel has also referred to the statement made by appellant and recorded under Section 313 of the Code of Criminal Procedure, 1973 (in short "Cr.P.C."). wherein answering to question Nos.12 and 17, the appellant categorically stated that he paid that amount of Rs.2,000/- of one hundred rupees denomination to PW3 but he did not know what PW3 did with the money and even he was not aware that those currency-notes were forged or counterfeit as they were given to him by the customers and he had not manufactured or printed those currency-notes.

17. Under such circumstances, it is submitted by the learned counsel for the appellant that there is no scope to prosecute the appellant for the alleged commission of offence of using as genuine, forged or counterfeit currency-notes or bank-

notes or for possessing of counterfeit currency-notes or bank-notes etc.

18. We have carefully appreciated and considered the entire evidence on record including the evidence of PWs 2, 3, 5, 8, 12 and 13. We have also closely examined the statement made by the appellant under Sections 313 of the Cr.P.C.

19. The actual facts that emerge from the evidence of those witnesses and the materials on record are that the appellant was a shopkeeper owning a Jewellery Shop. He was only concerned with his customers in carrying out his business day in and day out. It is revealed from his statement recorded under Section 313 of Cr. P.C. that he was not aware that those notes were fake and counterfeit. He stated clearly and categorically that those currency-notes were given to him by the customers coming to his shop and when he made the payment to the complainant PW2 and PW3 after the golden jewellery "Maityghar" was being pawned with him, he was not aware that those currency-notes were fake. Further, it is also seen that when the appellant's house was raided by PW12 he found Rs.2,000/- comprising of 20 numbers of hundred rupees denomination of which two of the hundred rupees notes only were found to be fake. It has also come from the evidence of the seizure memo that the two notes which were seized

during raid from the house of the accused-appellant were having original torn tag of State Bank of India, Tadong Branch, Gangtok.

20. Significantly it is to be noted that not a single witness so produced to prove its case by the prosecution ever deposed that the appellant knew or had reason to believe those currency notes to be forged.

21. In view of the above circumstances, the possibility of the fake currency-notes having been given to him by the customers in the course of his business and he being a laymen could not suspect the said currency-notes to be fake cannot be ruled out. It is hardly necessary to observe that mere possession of forged note is not an offence. The offence is directed against trafficking in fake notes and what is essential is that apart from possessing the fake notes, the appellant must know of its falsity and having known uses them. The appellant must have known or at least must have had reason to believe that the notes were counterfeited. It is also the requirement of law that the possession must be accompanied by intention to use that as genuine. Nothing has been brought on record by way of even collateral circumstances to show that the appellant had intention to use the fake notes as genuine. On the other hand, as already noted above, it cannot be said on the basis of the materials on record that the appellant knew or had reason to

believe that the currency-notes he was dealing with were counterfeited and issued such notes as genuine.

22. Under the circumstances, we have no hesitation to hold that the appellant did not possess those currency-notes knowingly or having reason to believe the same to be forged and counterfeit and trafficked such notes as genuine. In view of this, we are of the firm opinion to hold that the prosecution has failed to prove its case against the appellant under Sections 489B and 489C of the IPC beyond reasonable doubt. Accordingly, in our opinion, the impugned conviction and sentence call for interference of this Court.

23. In the result, the appeal stands allowed and the impugned conviction and sentence is hereby quashed.

24. It is stated that the appellant is presently on bail after serving 11 days of incarceration. Needless to say that consequent upon the quashment of the conviction and sentence, his bail bond stands discharged.

25. Send down the lower Court records forthwith.

(Justice A. P. Subba)
Judge
02-09-2009

(Justice A. H. Saikia)
Chief Justice
02-09-2009

rsr/ds