

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 307 of 2004

Mukesh Jain Appellant

Vs.

State of Uttarakhand Respondents

Present:

Mr. Sudhir Kumar, Advocate for the appellant.
Mr. Lalit Miglani, A.G.A for the State

JUDGMENT

Hon'ble Ravindra Maithani, J. (Oral)

Present appeal has been preferred against the judgment and order dated 30.09.2004, passed in Sessions Trial No.101 of 2001, State Vs. Mukesh Jain, by the court of Sessions Judge, Dehradun (for short, "the case"). By the impugned judgment and order, the appellant has been convicted under Section 489 C IPC and sentenced to rigorous imprisonment for a period of three years with a fine of Rs. 1000/-. It has further been directed that in case of default of payment of fine, the appellant shall undergo imprisonment for further period of one month.

2. Prosecution case, briefly stated, is as follows:-

On 06.09.2021, the police was on patrolling duty. They received an information that the appellant is having counterfeit currency notes and a revolver, who was standing near a car bearing Registration No. PB 10 U992. At 14:15 hours, the appellant was apprehended and from his possession, according to the prosecution, 83 counterfeit currency notes of Rs. 100/- each and a revolver were recovered. A recovery memo Ex. A2 was prepared and based on it, Crime No. 363 of 1999 under Section 489 C IPC and Crime No. 364 of 1999 under Section 25 of the Arms Act, 1959 was lodged at Police Station Mussoorie, Dehradun. The currency notes were sent for examination at Currency Note Press, Nasik. A report was received. According to which, 82 notes were counterfeit and one was original. The recovered currency notes, according to prosecution were also sent to Reserve Bank of India ("RBI), which reported that all the 83 currency notes are counterfeit. After investigation, charge sheet has been submitted against the appellant under Section 498 C IPC. Cognizance was taken. On 18.08.2001, charge under Section 489 C IPC was framed against the appellant. To which, he denied and claimed trial.

3. In order to prove the case, the prosecution examined, in all nine witnesses, namely, PW1 Constable, Brijesh Kumar, PW2 Constable, Nazar Abbas Jaidi, PW3 Anil Kumar Joshi, PW4 Constable, Damodar, PW5 Constable, Manoj Kumar, PW6 Constable, Karam Veer Singh, PW7 Sub Inspector, Subedar Sah, PW8 Chintamani and PW9 Pramod Kumar Tiwari.

4. Appellant was examined under Section 313 of the Code of Criminal Procedure, 1973 (for short, "the Code"). According to him, he has been falsely implicated. Nothing was recovered from him. He is innocent.

5. After hearing the parties, by the impugned judgment and order, the appellant has been convicted under Section 304 IPC and sentenced as stated hereinbefore. Aggrieved by it, the appellant has preferred this appeal.

6. Heard learned counsel for the parties and perused the record.

7. Learned counsel for the appellant has raised only three points in his submissions:-

- (i) The prosecution case is not reliable because the serial number of currency notes is inconsistent in the documents filed by the prosecution.
- (ii) The allegedly recovered currency notes serial number does not match with the serial number of the currency notes which were forwarded to the Government Press Nasik and to the RBI. It is argued that it doubts the prosecution case. In fact, it has also been argued that the genuine currency note was not forwarded to the Government Press Nasik whereas, the report of Government Press Nasik deals with the original or genuine currency note also.
- (iii) Mere possession of counterfeit currency notes is not punishable. It has also to be proved by the prosecution that the offender had such counterfeit currency notes, knowing or having reason to believe the same to be forged or counterfeit and the offender intended to use the same as genuine. It is argued that these ingredients

have not been proved. This mental status cannot be presumed.

8. It is argued that the prosecution utterly has failed to prove the case beyond reasonable doubt and the appellant is entitled to be acquitted of the charge.

9. In support of his contention, learned counsel has placed reliance on the principles of law, as laid down by the Hon'ble Supreme Court in the case of Umashanker Vs. State of Chattisgarh, (2001) 9 SCC 642 and K. Hashim Vs. State of Tamil Nadu (2005) 1 SCC 237.

10. In the case of Umashanker (*supra*), the Hon'ble Supreme Court discussed the provision of Section 489 B and 489 C IPC. The Hon'ble Supreme Court observed that mere possession of forged or counterfeit currency notes may not attract the provisions of Section 489 C IPC, unless *mens rea* is proved. The Hon'ble Supreme Court observed as hereunder:-

“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]).”

(emphasis supplied)

11. In the case of K Hashim (supra), the Hon’ble Supreme Court observed **“Possession and knowledge that the currency notes were counterfeited notes are**

necessary ingredients to constitute offence under Sections 489-C and 489-D.”

12. On the other hand, learned State counsel would submit that the difference in the serial numbers of the currency notes is not much material. The number of currency notes is 83 and there is no inconsistency or contradiction on that count. Learned State counsel would also submit that the appellant is a resident of New Delhi. He was apprehended in Mussoorie, District Dehradun with the counterfeit currency notes. Therefore, it can very well be presumed that he had such large number of counterfeit currency notes knowingly that they are counterfeit currency notes and he definitely intended to use such counterfeit currency notes.

13. PW1 Constable, Brijesh Kumar has proved chik FIR Ex. A1. PW2 Constable, Nazar Abbas Jaidi. PW3 Anil Kumar Joshi, PW5 Constable, Manoj Kumar, PW6 Constable, Karam Veer Singh are the police personnel, who according to the prosecution recovered the counterfeit currency notes from the appellant.

14. PW2 Constable Nazar Abbas Jaidi has stated that on 06.11.1999, he alongwith other police personnel

was on the patrolling duty. They received an information that a person who is standing near a car had counterfeit currency notes and a revolver. That person was apprehended and 83 currency notes were recovered from him. He was the appellant. A revolver was also recovered from him. This witness has proved the recovery memo Ex. A2. He also proved the currency notes Exs. 3 to 85 and also the envelopes in which they were kept Exs. 86 and 87.

15. PW3 Sub Inspector, Anil Kumar Joshi was Station House Officer of the Police Station Mussoorie. He was also in the police party. He has stated about the recovery and corroborated the statement of PW2 Nazar Abbas Jaidi. PW5 Constable, Manoj Kumar and PW6 Constable Karamveer Singh have also in their examination corroborated the statement of PW2 Constable Nazar Abbas Jaidi with regard to the recovery of the counterfeit currency notes from the possession of the appellant.

16. PW4 Constable, Damodar is the person who took the letter to the Government Press Nasik. He has proved it.

17. PW7 Sub Inspector, Subedar Sah initially conducted the investigation. According to him, he also prepared the site plan.

18. The investigation was completed by PW9 Inspector, CBI, Pramod Kumar Tiwari. He has submitted the charge sheet.

19. PW8 Chintamani is an Officer of Government Press Nasik. He has proved the report Ex. A 89. According to which, after examination, it was found that 82 notes were counterfeit, whereas, one was genuine.

20. Admittedly, there is a difference in the series of currency notes, as recorded in the recovery memo and as recorded in Ex. A88, which is a letter by which the currency notes were forwarded to the Government Press Nasik. This Ex A88 does not record the details of genuine currency note Bearing No. OKL481338. But, interestingly, in Ex. A89, as proved by PW8 Chintamani, there is a mention of the genuine currency note Bearing No. OKL481338. The question is that if the genuine currency note was not forwarded to the Government Press Nasik, how such currency note was examined. Who sent it to the Government Press Nasik?

21. Learned counsel for the appellant has during the course of argument demonstrated a list of the series of the currency notes which have been recorded in the recovery memo, which were forwarded to the RBI and which were sent to Government Press Nasik as below:-

1. Detail of currency notes recorded in recovery memo.

7MC	7MC	7MC	7MC	7MC	7MC	OKL
416828	416829	416837	416838	416839	416840	481338
33	12	5	6	20	6	1

2. Details of currency notes forwarded to RBI.

7MC	7MC	7MC	7MC	7MC	7MC
416828	416829	416837	416838	416839	416840
33	11	5	7	21	6

3. Details of currency notes forwarded by CBI to Government Press Nasik.

7MC	7MC	7MC	7MC	7MC	7MC
416828	416829	416837	416838	416839	416840
33	11	5	7	21	6

22. Learned State counsel does not dispute that the serial number has been noted as indicated hereinabove. There is some discrepancy with regard to series of 7 MC 416829, 7MC 416838 and 7MC 416839 (It is explicit from the above table). It has not been clarified. It definitely

creates some doubt in the prosecution case about the factum of recovery as well.

23. The appellant has been charged under Section 489C IPC it is as hereunder:-

“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.”

24. A bare reading of the above provision makes it clear that essentially, the three things must be established and proved in order to bring an offence under Section 489C IPC that is:-

- (i) Possession of forged currency notes;
- (ii) Knowing or having reason to believe that the same is forged or counterfeit (mental state) and;
- (iii) Intention to use such counterfeit currency note as genuine.

25. It is a criminal trial. The evidence has to be evaluated in view of the statutory provision. Section 4 of the Indian Evidence Act, 1872 provides for presumptions,

as to under what circumstances the Court may presume, shall presume or what are the indicators of conclusive proof. It is as hereunder:-

“4. **“May presume”**. — Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it.

“Shall presume”. — Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.

“Conclusive proof”. — When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.”

26. In the impugned judgment and order, it has been observed that since appellant was apprehended in Mussorrie and he belongs to Delhi, therefore, his conduct and circumstances, could attribute that he knew that he had counterfeit currency notes and he intended to use it as genuine. Such presumption cannot be drawn. Whenever, the Legislature permits the courts to presume any mental state, it has categorically been given in the statute itself. For example, as Section 35 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and Section 30 of the Protection of Children From Sexual Offences Act, 2012 provides for such presumption. They are as hereunder:-

**“Narcotic Drugs and Psychotropic Substances,
Act, 1985**

35. Presumption of culpable mental state.—(1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.—In this section “culpable mental state” includes intention, motive knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.”

**Protection of Children From Sexual Offences Act,
2012**

30. Presumption of culpable mental state.-

(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Explanation.-In this section, “culpable mental state” includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.”

”

27. Section 489 C IPC does not permit the court to presume the mental state of an offender, who is found in possession of the counterfeit or forged currency notes.

Mere possession is not punishable under Section 489C IPC.

28. PW2 Nazar Abbas Jaidi has stated in his examination that the recovered currency notes were appearing to be forged. This is what the other witnesses have stated.

29. The question to be answered is as to whether the appellant knew that the currency notes were forged or had he reason to believe that they were forged or counterfeit. The next question would be as to whether he intended to use them as genuine? In fact, there is no evidence to that effect. Mere possession cannot attribute such mental state.

30. The fact that the appellant is a resident of Delhi and he was apprehended in Mussoorie does not also empower the courts to raise such presumption. In fact, the evidence proves otherwise. PW3 Anil Kumar Joshi, who was Station House Officer at the relevant time has stated that when apprehended the appellant told that he received those currency notes as payment. (statement of PW3 Anil Kumar Joshi, Page 3, first three lines). Not only this, PW7 Sub Inspector, Subedar Sah, who initially took the

investigation has in para 16 of this statement stated that one more person Anil Jindal was also arrested. This witness took him in the custody and he had revealed that in fact, he had given the currency notes to the appellant. These statements of PW3 Anil Kumar Joshi and PW7 Sub Inspector, Subedar Sah have in fact, proved otherwise. It proves that the appellant did not have reason to believe that the currency notes were forged or counterfeit, because he was given those currency notes by Anil Jindal as a payment. It also falsifies the prosecution case that knowingly, that the currency notes are forged, the appellant intended to use them as genuine. Therefore, the essential ingredients of offence under Section 489C are lacking in this case.

31. In view of the foregoing discussion, this Court is of the view that prosecution has not been able to prove the charge under 489C IPC beyond reasonable doubt against the appellant. The appellant ought to have been acquitted of the charge. Therefore, the appeal deserves to be allowed.

32. The appeal is allowed.

33. The impugned judgment and order is set aside. Appellant is acquitted of the charge under 489C IPC.

34. Appellant is on bail. His bail bonds are cancelled and sureties discharged.

35. The appellant shall furnish a personal bond and two sureties, each of the like amount to the satisfaction of Court concerned, under section 437A of the Code within one month.

36. Let a copy of the judgment along with lower Court record be sent to the Court below for compliance.

(Ravindra Maithani, J.)
31.03.2022

Jitendra