

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.1138 OF 2015

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| 1) | Mohd. Luthpura Vajidali Shaikh, |] |
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| | |] .. Appellants |
| 2) | Smt.Anwarbibi Mohd. Mujibul Shaikh, |] |
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Versus

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| State of Maharashtra |] |
| (At the instance of Sr.P.I. DCBCID Unit - IX |] |
| Police Station vide C.R.No.19/2012) |].. Respondent |

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Mr.Neville Deboo i/b. Mr.Abhay B. Bhoir, Advocate for the Appellants.
Mr.S.V. Gavand, APP for the Respondent - State.

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CORAM : PRAKASH D. NAIK, J.

DATED : FEBRUARY 26, 2022.

JUDGMENT :

The appellants were convicted by judgment and order dated 7th December, 2015, passed by Additional Sessions Judge, City Civil and Sessions Court Greater Mumbai in Sessions Case No.399 of

2012, for the offences punishable under Sections 489-B and 489-C read with 120-B of Indian Penal Code ("IPC", for short). For the offence punishable under Section 489(B) of IPC, both the appellants were sentenced to suffer imprisonment of 10 years and fine of Rs.25,000/-, each for the offence punishable under Section 489 (C) of IPC, they were sentenced to suffer imprisonment for 7 years and fine of Rs.10,000/-, each. For conviction under Section 120 (B) of IPC, they were sentenced to suffer imprisonment of one year and fine of Rs.3,000/- each. Both were acquitted of the offence punishable under Section 489 (A) of IPC.

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The case of prosecution is as under:

- (i) Information was received that three persons are likely to come at Nandi Gulli, Bandra (West) on 7th February, 2012 at 09:00 a.m. for circulating fake/counterfeit currency notes. Trap was laid and three persons were apprehended. They disclosed their names as Mohd. Mittu Dinesh Shaikh, Jiyaulhak Idris Shaikh and Mohd. Luthpur Mohd. Wajid Ali Shaikh. Panch witnesses were called. Personal search of Mohd. Muttu Danesh Shaikh was carried out and he was found in possession of 100 counterfeit notes in the denomination of Rs.1000/-. Personal

search of Jiyaulhaq Idrish Shaikh resulted in 100 counterfeit currency notes in the denomination of Rs.1000/-. Search of Mohd. Luthpur Mohd. Wajid Ali Shaikh was conducted and he was found in possession of 100 currency notes in the denomination of Rs.1000/-. The currency notes were seized.

- (ii) During investigation, accused Mohd. Mittu Danesh Shakkh (accused no.1) disclosed that three other associates are also coming to circulate money at Bandra. Trap was laid at Bandra and three more persons were apprehended on the spot. They disclosed their names as Mohd. Mujubal Abdul Gafur Shaikh, Tarifullah and Anwarabibi. Panchas were called on the spot. Personal search of accused Mujubul resulted in possession of 10 counterfeit currency notes in the denomination of Rs.1,000/- and 20 counterfeit notes in the denomination of Rs.500/-. During personal search of accused Tarifulla, 30 counterfeit currency notes in the denomination of Rs.500/-, were recovered. P.W.6 took personal search of Anwarbibi at beat chowky and she was found in possession of 30 counterfeit notes in the denomination of Rs.500/-. They were taken to office of DCB CID Unit - IX Bandra.

- (iii) During investigation, accused Anwarbibi made voluntary statement on 7th February, 2012, that she is ready to show counterfeit currency notes. She led police to Antop Hill. She opened the room. All of them entered into the room MHADA, transipt camp. They were taken to upper floor room. She opened the room. They entered the room. She handed over plastic bag to police, containing 100 counterfeit currency notes in the denomination of Rs.1,000/-, and 50 counterfeit currency notes in the denomination of Rs.1,000/-. She disclosed that she and her husband Mujbhi and his friend Tariffullah have brought the currency notes for circulation from West Bangal. Recovery panchanama was recorded.
- (iv) After completing inveswtigation, charge-sheet was filed against accused nos.1 to 6 for offences punishable under Sections 489-A, 489-B and 489-C, 120-B and 34 of IPC. The appellants are accused nos.3 and 6.

3 Accused nos.1, 4 and 5 are absconding. Charge was framed against accused no.3 and accused no.6 (appellants) under Sections 489-A, 489-B and 489-C, 120-B and 34 of IPC.

4 Prosecution examined 7 witnesses. P.W.1 Deepak Sawant is assistant police inspector DCB CID Unit IC Bandra, P.W.2 Dhirendra Rammurti Mishra, is the panch witness, P.W.3 Kupuswami Mukkan Harijan is the panch witness, P.W.4 Naruddin Talibuddin Shaikh is panch witness, P.W.5 Shrishilya Mahadeo Kole was police sub inspector attached to Bandra police station, P.W.6 Sangeeta Pravin Patil was attached to Crime Branch Unit IX, as police inspector, P.W.7 Arun Shankar Satpute was attached to DCB CID Unit-X. He conducted investigation.

5 The trial proceeded against the appellants/accused no.3 and accused no.6. In paragraph 46 of the impugned judgment the trial Court has observed that there is no instrument or other relevant articles used for process of counterfeiting currency notes found in possession of accused nos.3 and 6, showing that they involved in any part of the process of counterfeiting currency notes. Hence, the prosecution has not proved charge under Section 489-A of IPC against accused nos.3 and 6, beyond reasonable doubt. However, they were convicted for the offence under Sections 489-B and 489-C of IPC.

6 Learned advocate for the appellant submitted that there is no evidence to convict the appellants for the offence under Section

489-B and 498-C of IPC. Prosecution has not examined independent witnesses. There was no attempt to select independent panch witnesses. There are contradictions in the evidence of P.W.1 and P.W.2. Arrest panchanama of accused no.6 does not disclose how she is arrested. P.W.4 did not witness search of accused no.6 (appellant no.2). The other panch witness was not examined. The currency notes were recovered from the house of the co-accused who was occupying the said premises. Appellant no.2 cannot said to be found in possession of those currency notes. P.W.3 is the spot witness. There is no evidence to show that the appellant no.2 was the conspirator with other accused.

7 learned APP submitted that there is sufficient evidence against he appellant. The charge under Section 489-B and 489-C. as well as Section 120-B were proved. There is recovery of large number of counterfeit notes. The possession of counterfeit currency note is proved. Since the possession was proved, it was for the accused to give an explanation under Section 106 of the Evidence Act. The offence is of serious nature. The currency notes were recovered from the residence at the instance of the appellant no.2. She cannot claim that she has no connection with the huge quantity of counterfeit currency notes which were recovered at her instance. Thus, there is sufficient evidence to establish the charges against both the appellants.

8 P.W.1 has stated that on 7th February, 2012, information was received by Senior P.I. Satardeker that three persons are coming at the Nandi Galli, Bandra (West), for circulation of fake currency notes. Two groups were formed for conducting raid. He was attached to DCB CID, Unit-IX, Bandra as API. They proceeded to the spot. At about 09:30 a.m., three persons came at the spot. The informant identified them and the accused were surrounded by raiding party. They disclosed their names as, Mohd. Muttu Danesh Shaikh, Jiyaulhaq Idrish Shaikh and Mohd. Luthpur Mohd. Wajid Ali Shaikh. Counterfeit currency notes were recovered from each of them. Panchanama was prepared. Currency notes were seized. FIR was registered. Accused were arrested. Appellant no.2 was not amongst the aforesaid three persons who were apprehended at the spot.

9 P.W.1 was cross-examined. He stated that he is not aware as to when the secret information was received by senior inspector Satardekar. The informant was not present in the chamber of senior inspector Satardekar when information was disclosed to them. There are various commercial shops near the spot. The spot is situated at the distance of 30 to 40 feet from Bandra railway station. There is Masjid towards right side of Masjid. There is beat chowki near the ticket counter. The railway passenger were at the bus stop. Nandi

Galli is at the right side of the bus stop. There are various commercial shops near Masjid. There is heavy traffic of pedestrians and passengers near the bus stop. Police Naik called panch witnesses on his mobile. In his presence no arrest panchanama of accused was recorded. No statement of passengers who were present at the bus stop were recorded in his presence. He lodged FIR at Bandra police station at 13:50 hours. No entry of muddemal property was taken in the station diary of Bandra police station.

10 The alleged recovery was at the instance of the three accused named herein-above. The information received by the police did not referred to the name of the appellant. Senior police inspector Satardekar who received information was not examined by the prosecution. P.W.1 does not refer to the involvement of appellant no.2 in any manner. The evidence of P.W.1 at the most disclose that the appellant no.1 and others were found in possession of counterfeit notes. The alleged spot of incident is situated in a public place. It is situated near the police station, railway station, bus stop etc. No evidence was adduced to establish that the accused were supposed to sell the counterfeit notes or were involved in sale of the counterfeit currency notes.

11 P.W.2 Dhirendra Rammurti Mishra is the panch witness. According to him, on 7th February, 2012, he was called by police officer Nandu Naik on phone at about 09:30 a.m. near bus stop no.220, Nandi Galli, Bandra (West). He reached the spot. He was informed about the personal search of suspected persons who were present at the spot. He was requested to act as a panch witness. Personal search of accused nos.1 to 3 had resulted in possession of counterfeit currency notes. Accused Mohd. Shaikh was found in possession of currency notes in the denomination of Rs.1000/-. Accused Jiyaulhaq Idrish Shaikh was found in possession of 100 currency notes in the denomination of Rs.1000/-, and, accused Mohd. Luthpur Mohd. Wajid Ali Shaikh was found in possession of 100 currency notes in the denomination of Rs.1000/-. The currency notes were seized. Panchanama was recorded.

12 In the cross-examination of P.W.2, stated that he knows police officer Nandu Naik since 5 to 6 months prior to 2012. He had occasion to meet him for about 2 to 4 times. Police did not offer their search to him. Police did not ask him to take search of the accused persons who were at the spot. Public was passing from the spot of the road. He came on the spot for acting as panch witness, as per say of police officer Nandu Naik. Number of people were on the bus stop.

Police did not make his detail inquiry. Police did not record statement of any person in his presence on the spot. The serial number of notes were recorded by police officer by standing. The entire panchanama was concluded by 12:00 noon. Thereafter, he did not go to police station. He has not made any signature at police station. Except the serial numbers of currency notes, his name and name of accused, other writings in the panchanama was not done in his presence. He cannot tell which serial number of bundle of notes were found in with which accused. Police inspector Sangeeta Patil, PI Satpute and others were present on the spot along-with other staff. Learned advocate for the appellant has urged that police inspector Sangeeta Patil has been examined as P.W.6, and, she has not stated that she was present at the spot of incident.

13 P.W.3 Kupuswami Mukkan Harijan, examined as panch witness. According to him, he was called by the police on 7th February, 2012. He was told that he should act as panch witness. Accused were present at the office of DCB CID accused Anwarbibi Shaikh (Appellant no.2) disclosed her name in his presence. She was in custody of DCB CID. Another panch witness was present prior to his arrival in the office. Accused no.6 (Appellant no.2) had stated that she is resident of West Bengal. She made a statement that she along-with her husband

and friend of her husband brought counterfeit currency notes and was ready to show the counterfeit currency notes and the place where she had kept it. Her statement was recorded. All of them proceeded along with accused no.6. They went to Sion Koliwada, Antop Hill. The vehicle was stopped by accused no.6 and she took them to her house. They entered in the room. Accused no.6 took about out the plastic carry bag from below the bed-sheet cover, and, produced it to the police. It was opened and found containing three bundles in the denomination of Rs.1,000/-. Two bundles were of 100 currency notes in denomination of Rs.1000/-, and, one bundle of 50 currency notes in the denomination of Rs.1,000/-. All these notes were counterfeit. Recovery panchanama was recorded.

14 In cross-examination, P.W.3 has deposed that he do not remember whether he have acted as panch witnesses in or about 500 cases of Santacruz, Khar, Kherwada, Nirmal Nagar police station etc. He do not know in how many cases he has deposed in the Court. He had come to the Court for visiting the relatives who are in jail, in the case of Santacurz police station, and, their cases are pending in the Court. From her deposition in the cross-examination, it can be seen that there is no denial by her about acting as panch witness in several cases and deposing in about 100 cases in the Court as panch witness.

The inference can be drawn from her deposition that she was panch witness in several cases. He knows police officers from Santacruz police station as he oftenly visits there. The DCB CID Bandra is under Santacruz police station. His residence is at the distance of 15 to 20 minutes from the office of DCB CID Unit Bandra by auto-rickshaw. He admitted that Antop Hill and Kings Circle are different areas. King Circle is in Matunga and Antop Hill is in Sion Koliwada. Accused no.6 had stated that she is residing at Antop Hill, Sion Koliwada. It would not be correct to say that accused no.6 is residing at Kings Circle, Matunga below railway bridge. It is mentioned in the panchanama that accused no.6 is residing at Kings Circle, Matunga, below railway bridge. He cannot assign any reason as to why said fact is mentioned in the panchanama. In the cross-examination, it was further stated that the police inquired about the family members who were residing in the house. Accused no.6 told that she was residing along with her husband and friend of husband in the said house. Husband of accused no.6 and friend of her husband were not present when they had visited the house of accused no.6. Police inquired with neighbours about the persons who were residing in the house and that the said house was given on rent. The tenant was called by police and his statement was recorded in her presence.

15 From the evidence of P.W.3, it is apparent that there are discrepancies about the place of residence of accused no.6 in the panchanama and place where the search was carried out. The premises were occupied by several persons. The accused no.6 was residing with her husband who and his friend are co-accused in the present case. Premises were also occupied by the tenant. Statements of tenant were recorded. The tenant has not been examined by the prosecution. It is difficult to note that the accused no.6 was in conscious possession of counterfeit currency notes recovered from the residential premises.

16 P.W.4 Naruddin Talibuddin Shaikh is also acted as panch witness. According to him, he was passing from the road at the time he was requested to act as panch witness. He stated that three accused persons were present at Beat Chowki. One was the woman. One of the accused disclosed his name as Mohammad Mujibil, and, he was found in possession of 10 notes in the denomination of Rs.1,000/-, 20 notes in the denomination of Rs.500/-. Another accused disclosed his name as Jin, but, he do not remember his full name. He was found in possession of 30 notes in the denomination of Rs.500/-. One lady constable took the woman inside small room. Lady panch witness accompanied with lady officer Sangeeta Patil. She was not inside the

small room when search of the lady accused was conducted. The lady panch witness and lady police officer came out after taking personal search of the said woman accused and told that the woman accused was found in possession of 30 notes in the denomination of Rs.500/- and one mobile. Panchanama was recorded. In the cross-examination this witness has stated that personal search of accused no.6 was taken in closed room. He had not seen actual search of accused no.6. He learnt from lady police officer and one lady panch witness that some notes in the denomination of Rs.500/- were found with accused no.6.

17 The co-accused Mujibil was not tried as he is absconding. The search of appellant no.2 was conducted in closed room. It was allegedly conducted in the presence of lady panch witness and senior police inspector Sangita Patil. P.W.4 was the other panch since it was the search of lady, it was conducted in the closed room. P.W.4 had no occasion to see search and possession of counterfeit currency notes from accused no.6. He learnt about the possession of currency notes by accused no.6 through the lady panch witness. However, the lady panch witness Smt. Meenakshi is not examined by the prosecution. The only other witness who was allegedly followed search and seizure of accused no.6, is senior inspector Sangita Patil. She has been examined by the prosecution as P.W.6. However, the necessity of

presence of independent panch witness at the time of search and seizure of counterfeit currency notes is not fulfilled since the lady panch witness is not examined by the prosecution. The version of P.W.6 who was the part of investigating team is not corroborated by independent evidence. The evidence about arrest of appellant no.2 or panchanama of arrest is not referred to by P.W.4.

18 P.W.5 Shri.Shrishilya Kole was the assistant police inspector. He was attached to Bandra Police Station. He was on duty as SHO on 7th February, 2012. According to him, P.W.1 came to the police station at 12.25 hours. He lodged FIR, which was recorded by him. C.R.No.46 of 2012 was registered under Section 489-B and 489-C of IPC. In the cross-examination, he stated that the FIR came to be registered at 13:50 hours. After recording statement of complainant, he registered it as FIR. He was not aware of the fact of incident before recording of statement of complainant. The recovered articles from accused were with API Deepak Sawant and not produced before him in the police station. No arrest panchanama of accused was prepared in his presence.

19 P.W.6 Sangeeta Patil was attached to Crime Branch Unit - IX, Mumbai as P.I. According to her, she was member of raiding party

on 7th February, 2012. Panchanama of seizure was drawn in her presence at Anant Anant Kanekar Marg, Bandra (E), Police beat chowki. Three accused persons were in police beat chowki. They disclosed their names as Mujibul Shaikh, Anwarbibi Musibul Shaikh and Tarifulla Shaikh. Personal search of the accused resulted in possession of currency notes. Personal search of accused no.6 Anwarbibi was taken in presence of panch witness Manisha Rathod in one room of police beat chowki. Currency notes in the denomination of Rs.500/- were found in her possession. She confessed that currency notes were taken. She deposed that she was the member of raiding party when all the three accused were apprehended. She did not make any inquiry with the passerby at the time of raid. She had not personally inquired with Virendra Mishra and Rajeshkumar Gupta. Both were present and acted as panch witnesses. There is only one police beat chowki no.1 at Anant Kanekar Marg.

20 From the evidence of P.W.6, it is clear that accused no.6 was searched in the presence of panch Manisha Rathod. However, Manisha Rathod has not been examined by the prosecution. Thus, the recovery of currency notes from accused no.6 (appellant no.2), is doubtful. There is no independent witness to corroborate version of P.W.6.

21 P.W.7 Arun Satpute was attached to DCB CID Unit IX, Bandra. On 7th February, 2012, he was present at the office. According to him, Senior PI Satardekar received secret information about three accused likely to come for circulation of fake currency notes. Three persons came near the spot and they were apprehended. Counterfeit currency notes were recovered from them. The arrested accused disclosed that their three associates would come at Bandra East for circulation of fake currency notes. They proceeded to the spot. The accused were surrounded. Pancha were called. The accused disclosed their names as, Mohd. Mujibal Abdul Gafur Shaikh, Tarifullah and Anwarabibi. Their search was conducted. Currency notes were recovered from accused. Sangeeta Patil took the lady accused along-with lady panch witness at beat chowki. Accused was searched in presence of panch witness Meenakshi Rathod. It was disclosed by Sangeeta Patil and panch witness that accused no.6 was found in possession of counterfeit currency notes. Panchanama (Exhibit-69) was recorded. The witness also referred to statement of accused no.6 leading to recovery of counterfeit notes from the residence.

22 P.W.7 in his cross-examination has stated that the panchs were called on the spot. There was no reason that they did not take panch witnesses along-with them at the spot. He did not record

the statement of accused no.1. The information was given by accused no.1 that the other accused are coming at 02:30 p.m. One lady panch witness was called and there were other male accused who were arrested along with accused no.6. They called one lady panch witness and other male panch witness. Generally before taking personal search of accused, they asked the panch witnesses to take search of them. If the accused take objection then they make note of the same in the panchanama. It is not mentioned in the panchanama that they offered their search to the panch witnesses. They took panch witnesses near the vicinity of police beat chowki. Accused no.6 disclosed her residence at Bangalipura zopadpatti below railway bridge, King Circle, Mumbai. The place from where currency notes were allegedly recovered at the instance of accused no.6 is also occupied by her. husband Mujibul and friend Tarifulla. Mujibul and Tariffulla were arrested in this case. They are absconding. Husband of accused no.6 and his friend were on visiting terms in the house of accused no.6. The vicinity from where the accused no.6 is arrested is thickly populated. There is auto rickshaw stand in the front side of bus stop no.220. P.W.7 recorded the statement of witnesses on the spot. In the office of DCB CID, he did not record statement of panch witness. He did not get panch witness on the spot. No separate arrest panchanama of accused no.3 was prepared.

23 The report tendered by learned APP received from Nashik Road Central Prison dated 27th February, 2021, mentions that accused no.3 (Appellant no.1) has undergone the sentence and he has been released from prison on 4th May, 2021. The report is taken on record.

24 The appellants were charged for the offences punishable under Sections 489-B and 489-C read with 120-B of IPC. Both the appellants were acquitted by the trial Court for the offence under Section 489-A of IPC. However, they were convicted for the offence punishable under Section 489-B and 489-C of IPC.

25 Section 489-B of IPC relates to using as genuine, forged or counterfeit currency-notes or bank-notes. Although the accused were allegedly found in possession of counterfeit currency notes, there is no cogent evidence to establish the offence under Section 489-B of IPC against the appellants. Both the appellants deserves to be acquitted for the offence under Section 489-B of IPC. However, the prosecution has proved that accused no.3 (Appellant No.1) has committed offence under Section 489-C of IPC, which relates to possession of forged or counterfeit currency-notes. Whereas,

prosecution case *qua* accused no.6 (Appellant No.2) suffers from serious infirmities. Both recoveries relating to counterfeit currency notes at the instance of appellant no.2 suffers from serious discrepancies and doubtful. The prosecution has not proved beyond doubt that the appellant no.2 was found in possession of counterfeit currency notes at the spot or at her instance from the residence. Thus, appellant no.2 deserves to be acquitted also for the offence under Section 489-C of IPC. Conspiracy charge is not proved.

26 In the light of the aforesaid observations, I pass the following order:

:: ORDER ::

- (i) Criminal Appeal No.1138 of 2015, is partly allowed;
- (ii) The conviction for the offence punishable under Section 489 B of IPC imposed vide judgment and order dated 7th December, 2015, passed by Sessions Court, Mumbai, in Sessions Case No.399 of 2012, in C.R.No.19 of 2012 of DCBCID Unit-IX Police Station, convicting both the appellants for the offence under Section 489-B read with Section 120-B of IPC, is set aside and the appellants are acquitted under Section 489-B of IPC;

- (iii) The judgment and order dated 7th December, 2015, passed by the Sessions Court convicting appellant no.1 Mohd. Luthpura Vajidali Shaikh, for the offence under Section 489-C of IPC, is confirmed;
- (iv) The judgment and order dated 7th December, 2015, passed by Sessions Court convicting appellant No.2 Smt.Anwarbibi Mohd. Mujibul Shaikh for offence under Section 489-C read with Section 120-B of IPC is set aside and she is acquitted of the said charge;
- (v) The conviction and sentence of imprisonment imposed for conviction for offence under Section 120-B of IPC against both the appellants is set aside, and, they are acquitted for the offence under Section 120-B of IPC;
- (vi) Criminal Appeal No.1138 of 2015, stands disposed of accordingly.

(PRAKASH D. NAIK, J.)