IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

Reserved on: 20.07.2023
Pronounced on:02.08.2023

CRA No.06/2008

MOHAMMAD ASHRAF RESHI ... APPELLANT(S)

Through: - Mr. M. A Qayoom, Advocate,
Mr. Muzaffar, Advocate.

Vs.

STATE OF J&K …RESPONDENT(S)

Through: - Ms. Rekha Wangnoo, GA.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The appellant has called into question judgment dated 23.07.2007, passed by learned Sessions Judge, Jammu, whereby he has been convicted of offences under Section 489-B and 489-C of the RPC. Challenge has also been thrown to order dated 26.07.2007, passed by the learned Sessions Judge, Jammu, whereby the appellant in proof of offence under Section 489-B of RPC has been sentenced to undergo rigorous imprisonment of three years and a to pay a fine of Rs.10,000/ whereas in proof of offence under Section 489-C of RPC, the appellant has been sentenced to undergo rigorous imprisonment of two years with a fine of Rs.5,000/. In default of payment of fine, the appellant has been directed to undergo further imprisonment of like nature for a period of six months and three months respectively.

2) Briefly stated, case of the prosecution is that on 29th October, 1999, the police of Police Post, Parade, Jammu, received an information that a Kashmiri person, namely, appellant herein, has purchased certain articles from Sumitra Gift Centre, Purani Mandi, against payment of fake notes. This information was entered into Daily Diary and on its basis, FIR No.154/1999 for offences under Section 489-B and 489-C RPC was registered with Police Station, Pacca Danga, Jammu. Investigating Officer, PW-5, Himat Singh, proceeded to the spot and apprehended the appellant while tendering fake notes. Four fake currency notes of five hundred denomination bearing serial Nos.9RC 808110, 5XN 828917, 1HB 568116 and 5RE 972511 were recovered from the possession of the appellant. One of the notes bearing No.1HB 568116 was found torn from the center whereas another note bearing No.5RE 972511 was found in a wrinkled condition. The seized notes were sent for examination to Assistant Manager, Reserve Bank of India, Railway Road, Jammu, who opined that these notes are fake in nature. Accordingly, offences under Section 489-B and 489-C of RPC were found established against the appellant and the charge sheet was laid before the trial court.

3) The accused denied the charges and claimed to be tried. The prosecution in order to prove charges against the appellant, examined as many as six witnesses, namely, PW-1, Pardeep Sharma, PW-2, Ashok Kumar SGC, PW-3, Rakesh Kumar, PW-4, Shahab Danish, PW-5, Himat Singh Inspector, and PW6-Sanjeev Mahindroo.

4) After completing the prosecution evidence, the incriminating circumstances appearing in the evidence led by the prosecution were put to the appellant to seek his explanation and his statement under Section 342 of the J&K Cr. P. C was recorded. In his statement, the appellant denied that fake currency notes were recovered from his possession and claimed that he has been falsely implicated by the police. The appellant entered his defence and examined one witness viz. DW Maharaj Krishan Koul, in defence.

5) The learned trial court, after hearing the parties and after appreciating the evidence on record, came to the conclusion that the charges for offences under Section 489B and 489C of RPC are established against the appellant and consequently the impugned judgment of conviction and order of sentence came to be passed.

6) The appellant has challenged the impugned judgment of conviction and the order of sentence on the grounds that the learned trial court has not appreciated the evidence on record in a proper manner. It has been contended that there was no evidence on the record of the trial court to show that the appellant was having knowledge or he had reason to believe that the currency notes allegedly recovered from his possession were forged. It has also been contended that even the seizure memo has not been proved as the only independent witness to the seizure has turned hostile. It has been further contended that the ingredients of offences under Section 489-B and 489-C of RPC have not been established from the evidence on

record and this aspect of the matter has been ignored by the trial court while passing the judgment of conviction. It has also been contended that the statement of the appellant under Section 342 of J&K Cr. P.C has not been properly recorded by the trial court, inasmuch as the whole of the incriminating material that has been used by the trial court while passing the impugned judgment of conviction has not been put to the appellant for his explanation.

7) I have heard learned counsel for the parties and perused the grounds of appeal, the impugned judgment and the trial court record including the evidence led by the parties before the trial court.

8) Before dealing with the grounds of appeal that have been urged by the appellant, it would be apt to notice the law relating to the scope of power of this Court while dealing with a conviction appeal in terms of Section 374 of the Cr. P. C, which is in *pari materia* with Section 374 of the J&K Cr. P. C. The Supreme Court has, in the case of **Lal Mandi vs. State of Bengal,** 1995 Cri.LJ 2659, discussed the duties of appellate court while considering an appeal against conviction. It would be apt to refer to the observations of the Supreme Court which are relevant to the context. The same are reproduced as under:

> *"……. In an appeal against conviction, the Appellate Court has the duty to itself appreciate the evidence on the record and if two views are possible on the appraisal of the evidence, the benefit of reasonable doubt has to be given to an accused. It is not correct to suggest that the "Appellate Court cannot legally interfere with" the order of conviction where the trial court has found the evidence as reliable and that it cannot substitute the findings of the Sessions Judge by its own, if it arrives at a different*

conclusion on reassessment of the evidence. The observation made in Tota Singh's case, which was an appeal against acquittal, have been misunderstood and mechanically applied. Though, the powers of an appellate court, while dealing with an appeal against acquittal and an appeal against conviction are equally wide but the considerations which weigh with it while dealing with an appeal against an order of acquittal and in an appeal against conviction are distinct and separate. The presumption of innocence of accused which gets strengthened on his acquittal is not available on his conviction. An appellate court may give every reasonable weight to the conclusions arrived at by the trial court but it must be remembered that an appellate court is duty bound, in the same way as the trial court, to test the evidence extrinsically as well as intrinsically and to consider as thoroughly as the trial court, all the circumstances available on the record so as to arrive at an independent finding regarding guilt or innocence of the convict. An Appellate Court fails in the discharge of one of its essential duties, if it fails to itself appreciate the evidence on the record and arrive at an independent finding based on the appraisal of such evidence……"

9) From a perusal of the aforesaid observations of the Supreme Court, it is clear that the appellate court is duty bound to test the evidence extrinsically as well as intrinsically in the manner in which a trial court does so. It is also clear that the appellate court has to appreciate the evidence on record and arrive at an independent finding based on the appraisal of such evidence while deciding an appeal against the conviction.

10) In the light of the aforesaid legal position, let us now proceed to test the grounds of appeal that have been urged by the appellant in this case. The main ground that has been raised by learned counsel for the appellant while impugning the judgment of conviction is that there was no evidence on record before the trial court to impute knowledge to the appellant or to conclude that the appellant had reason to believe

that the currency notes allegedly recovered from his possession were fake in nature.

11) In order to test the merits of this contention, it would be apt to notice the provisions contained in Section 489-B and 489-C of RPC. The same are reproduced as under

> ***489-B. 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.*
>
> ***489-C. Possession of forged or counterfeit currency notes or banknotes.*** *— 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.*

12) Section 489-B RPC makes use as genuine of forged or counterfeit currency notes an offence if the accused knows or has reason to believe the same to be forged or counterfeit. Similarly, Section 489-C makes possession of forged or counterfeit currency notes punishable if the person in possession knows or has reason to believe the same to be forged or counterfeit. The crucial expressions which are appearing in both the aforesaid provisions are 'knowledge

or reason to believe'. Unless it is shown that the person in possession of forged currency notes or the person using forged currency notes had either knowledge about the forged nature of the currency notes or he had reason to believe that the currency notes in question are forged, no liability can be fastened upon him in connection with offences under Section 489B and 489C of the RPC.

13) The expressions 'knowledge and reason to believe' came up for consideration before the Supreme Court in the case of **A. S. Krishnan vs. State of Kerala,** (2004) 11 SCC 570. Paras 9 and 10 of the said judgment are relevant to the context and the same are reproduced as under:

> ***9.*** *Under the IPC, guilt in respect of almost all the offences is fastened either on the ground of "intention" or "knowledge" or "reason to believe". We are now concerned with the expressions "knowledge" and "reason to believe". "Knowledge" is an awareness on the part of the person concerned indicating his state of mind. "Reason to believe" is another facet of the state of mind. "Reason to believe" is not the same thing as "suspicion" or "doubt" and mere seeing also cannot be equated to believing. "Reason to believe" is a higher level of state of mine. Likewise "knowledge" will be slightly on higher plane than "reason to believe". A person can be supposed to know where there is a direct appeal to his senses and a person is presumed to have a reason to believe if he has sufficient cause to believe the same. Section 26 IPC explains the meaning of the words "reason to believe" thus:*
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> > *26. "Reason to believe"- A person is said to have 'reason to believe' a thing, if he has sufficient cause to believe that thing but not otherwise."*
>
> *10. In substance, what it means is that a person must have reason to believe if the circumstances are such that a reasonable man would, by probable reasoning, conclude or infer regarding the nature of the thing concerned. Such circumstances need not necessarily be capable of absolute conviction or inference; but it is sufficient if the circumstances are such creating a cause*

> *to believe by chain of probable reasoning leading to the conclusion or inference about the nature of the thing. These two requirements i.e. "knowledge" and "reason to believe" have to be deduced from various circumstances in the case.*

14) In the case of **Umashankar vs State of Chhattisgarh,** (2001) 9 SCC 642, the ingredients of offences under Section 489-B and 489-C IPC came up for consideration before the Supreme Court and the Court held as under:

> *"Sections 489-A to 489-E deal with various economic offences in respect of forged or counterfeit currency-notes or bank-notes. The object of Legislature in enacting these provisions is not only to protect the economy of the country but also to provide adequate protection to currency-notes and bank-notes. The currency-notes are, inspite of growing accustomedness to the credit cards system, still the backbone of the commercial transactions by multitudes in our country. But these provisions are not meant to punish unwary possessors or users.*
>
> *A perusal of the provisions, extracted above, shows that mens rea of offences under Section 489-B and 489-C is, "knowing or having reason to believe the currency-notes or bank notes to be forged or counterfeit". Without the afore-mentioned mens rea selling, buying or receiving from another person or otherwise tranfficking in or using as genuine forged or counterfeit currency-notes or bank-notes, is not enough to constitute offence under Section 489-B of I.P.C. 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 Section 489-C in the absence of the mens rea, noted above…."*

15) The Supreme Court has, it is latest judgment delivered in the case of **Dipakbhai Jagdishchandra Patel vs. State of Gujarat and another,** (2019) 16 SCC 547**,** reiterated the ratio laid down in **Umashankar's** case (supra).

16) From the foregoing enunciation of law on the subject, it is clear that unless the evidence on record clearly leads to the conclusion that

the accused had the requisite guilty knowledge of forged character of the currency notes or he had reason to believe so, it cannot be stated that he is guilty of the charge for offence under Section 489-B and 489-C of RPC.

17) In the light of the legal position discussed hereinbefore, let us now consider the facts established from the record. In the instant case, the star witness of the prosecution, PW Sandeep Sharma, the shopkeeper, to whom the appellant is stated to have tendered forged currency notes of rupee five hundred denomination, has deposed that perhaps the appellant came to his shop and purchased goods valuing Rs.80/ or 90/ and gave him a five hundred rupee note, which upon checking was found to be fake by him. He has further stated that he returned the said note to the appellant who gave him another Rs.500/ note but the said note was also fake. When the witness told the appellant that the note was fake, he scuffled with him and tried to snatch the note from him.

18) The learned trial court has concluded that the appellant had knowledge or reason to believe that the currency note tendered by him to the shopkeeper, PW Pardeep Sharma, was fake on the basis that the appellant was having currency notes of lesser denomination with him but still then he preferred to tender Rs.500/ currency note to the shopkeeper which, according to the learned trial court, shows that he had the knowledge about the forged nature of the currency note. There is no other evidence on record to even remotely suggest that the

appellant was having either knowledge or reason to believe that the currency note which he tendered to PW Pardeep Sharma was fake.

19) Section 8 of the Evidence Act makes the conduct of any person an offence against whom is the subject of any proceeding relevant, if such conduct influences or is influenced by any fact in issue or relevant fact and whether it was previous and subsequent thereto. The learned trial court has drawn a presumption against the appellant on the basis of his conduct that he tendered a currency note of higher denomination to the shopkeeper though he was in possession of currency note of lower denomination. The presumption drawn by the learned trial court in this regard does not appear to be in consonance with normal human conduct. It is not uncommon that a person buying goods from a shopkeeper tenders a currency note of higher denomination for purchase of goods of a lesser value even though the person may be in possession of currency notes of lower denomination. Generally, people do so in order to save currency notes of lesser denomination for future use. Thus, merely because the appellant tendered a currency note of higher denomination to the shopkeeper for purchase of articles, it cannot be concluded that he had knowledge of the forged nature of the currency notes.

20) In fact, it has come in the evidence on record that the appellant scuffled with the shopkeeper after he was told that the currency note tendered by him is forged in nature. The normal human conduct in such cases would be that the appellant should have fled away from the

spot without entering into argument with the shopkeeper leaving behind the currency note so as to escape himself from the clutches of the police but in the instant case, the appellant, as per the evidence on record, not only scuffled with the shopkeeper but he remained there till the police reached the spot and caught hold of him. No person having knowledge that he is in possession of forged currency notes would keep on waiting for the police to catch him red-handed. Not only this, the appellant tendered another note to the shopkeeper despite knowing that the shopkeeper has returned the first currency note on the ground that the same is fake. This conduct of the appellant militates against his knowledge about the forged nature of the currency notes. Imputation of knowledge to the appellant presumed by the trial court on the basis of his conduct is against the logic and reasoning. The, learned trial court has failed to appreciate the evidence on record in a proper perspective.

21) There is yet another aspect of the matter which has been ignored by the learned trial court in the instant case. As per the prosecution, the appellant has been found to be in possession of four fake notes of Rs.500/ denomination. It is not a case where the appellant was found in possession of such notes in large numbers which obviously would have been inexplicable but it is a case where only four forged currency notes are alleged to have been recovered from the possession of the appellant. It has come in the evidence on record, particularly in the cross-examination of the I.O, PW-5 Himat

Singh, that the appellant upon questioning told him that he is dealing in watches and is running a shop at Anantnag. He has further stated that the appellant told him that these notes were received by him from sale. The appellant has produced evidence in defence in the shape of testimony of DW Maharaj Krishan Koul who has confirmed the fact that the appellant is running a shop at Anantnag, and that he deals in sale of watches and transformers. The appellant, while making his statement at the time of framing of charges and at the time when his statement under Section 342 of the J&K Cr. P. C was recorded, has disclosed his occupation as 'business'. All this material on record clearly goes on to show that the appellant is a businessman and his defence that he received these fake notes during sale cannot be discarded. Thus, having regard to the fact that only four currency notes were recovered from the possession of the appellant coupled with the fact there is no evidence on record as regards the source of these forged notes, the defence of the appellant that he may have received these notes in normal course of his business, deserves to be accepted. The learned trial court has totally ignored this aspect of the matter while passing the judgment of conviction against the appellant.

22) Apart from the above, there is no evidence on record to show that the fake currency notes were of such a nature that anybody could have suspected them to be of forged nature. In these circumstances to presume that the appellant was knowing the forged nature of the

currency notes or that he had reason to believe so, cannot be concluded from the circumstances proved on record.

23) Lastly, it has been contended by learned counsel for the appellant that the fake currency notes allegedly recovered from the appellant were not sealed and, therefore, opinion of the expert about the nature of the currency notes cannot be taken into account.

24) It is admitted case of the petitioner that there is no evidence on record to show that after recovery of the currency notes from the possession of the appellant, the same were sealed by the Investigating Officer. Therefore, the prosecution has failed to establish that the notes that were recovered from the possession of the appellant were the same notes as were examined by PW Shahab Danish, Assistant Manager RBI. It was incumbent upon the prosecution to prove that the currency notes that were recovered from the possession of the appellant were the same that were examined by the expert. In this regard I am supported by the judgment of the Bombay High Court in the case of **Rajendra Baban Chaudhary and Ors. vs. State of Maharashtra, 2015 Cri.L.J. 2833.** Thus, a very important link in the case of the prosecution is missing which creates a severe dent in the prosecution case.

25) For the foregoing reasons, it is impossible for this Court to sustain the conviction of the appellant. Accordingly, the appeal is allowed and the impugned judgment of conviction and the order of

sentence are set aside. The bail bonds and surety bonds of the appellant are discharged.

26) The trial court record along with a copy of this judgment be sent to the learned trial court.

(Sanjay Dhar)
Judge

Srinagar,
02.08.2023
"Bhat Altaf, PS"

Whether the order is speaking: ***Yes/No***
Whether the order is reportable: ***Yes/No***