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UMASHANKAR  
v.  
STATE OF CHHATTISGARH

OCTOBER 5, 2001

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[SYED SHAH MOHAMMED QUADRI AND S.N. PHUKAN, JJ.]

*Penal Code, 1860:*

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*Ss.489B and 489C—Accused found to have circulated fake currency note in market and similar currency notes recovered from his possession—Prosecuted u/ss. 489A, 489B and 489C—Convicted and sentenced u/ss. 489B and 489C by trial court—Conviction affirmed by High Court but sentence reduced—Held, means rea of offences under ss. 489B and 489C is “knowing or having reason to believe the currency notes or bank notes to be forged or counterfeit”—Without such 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 u/s. 489B—So also in the absence of the said mens rea possessing or even intending to use such notes is not sufficient to make out a case u/s. 489C—No material is brought on record to show that accused had the requisite mens rea—The presumption drawn by trial court is not warranted u/s. 4 of Evidence Act—It is also not shown that any specific question with regard to currency notes being fake or counterfeit was put to accused in his examination u/s. 313 of Code of Criminal Procedure—Charges framed u/ss. 489B and 489C are not proved—Conviction and sentence set aside—Evidence Act, 1872—S.4—Code of Criminal Procedure, 1973—S.313—Criminal Law—Mens rea.*

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1024 of 2001.

From the Judgment and Order dated 2.11.99 of the Madhya Pradesh High Court in Crl. A. No. 39 of 1992.

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Pramod Swarup, Ms. Pareena Swarup and Praveen Swarup for the Appellant.

Ms. Gitanjali Mohan for Prakash Shrivastava for the Respondent.

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The following Order of the Court was delivered :

Leave is granted.

The convict, in Session Trial No. 26 of 1991 on the file of the learned Sixth Additional Sessions Judge, Bilaspur, under Sections 489-B and 489-C of the Indian Penal Code (for short, 'I.P.C.')

who was sentenced to three years' rigorous imprisonment on each count, is in appeal from the judgment of the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No. 39 of 1992, allowing it in part on November 11, 1999. The High Court upheld the conviction but reduced the sentence from three years' rigorous imprisonment to two years' rigorous imprisonment under Section 489-B and one year's rigorous imprisonment under Section 489-C.

Heard Mr. Pramod Swarup, the learned counsel appearing with Mr. Praveen Swarup, Advocate-on-Record for the appellant and Ms. Gitanjali Mohan, the learned counsel appearing with Mr. Prakash Shrivastava, Advocate-on-Record for the respondent-State.

The gravamen of the charge against the appellant is that on May 25, 1990 at about 10 p.m. having purchased one kilo gram of mango costing Rs. 5 he paid a fake currency-note of Rs. 100 to P.W. 4 who doubted its genuineness. She showed it to P.Ws. 2 and 7 who also said that it was a fake currency-note. He was handed over to police who recovered 13 more such fake currency-notes from him. Further some papers, refills of different colours and scissors were also recovered from his house. On these facts charges were framed against him under Sections 489-A, 489-B and 489-C of I.P.C.

After considering the evidence on record the learned trial judge acquitted him of charge under Section 489-A but found him guilty of charges under Sections 489-B and 489-C of I.P.C. and sentenced him for the periods noted above. On appeal the High Court confirmed the conviction but reduced the sentence, afore-mentioned.

The conviction of the appellant by the trial court as confirmed by the High Court, is under Section 489-B and Section 489-C of I.P.C., which read 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

A 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.

B 489-C. *Possession of forged or counterfeit currency notes or bank-notes.*-

C 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."

D 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.

E 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 trafficking 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. No material is brought on record by the prosecution to show that the appellant had the requisite *mens rea*.

F The High Court, however, completely missed this aspect. The learned trial judge on the basis of the evidence of P.W.2, P.W.4 and P.W. 7 that they were able to make out that currency note alleged to have been given to P.W. 4, was fake "presumed" such a *mens rea*. On the date of the incident the appellant was said to be 18 year old student. On the facts of this case the Presumption drawn

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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 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 of I.P.C. and acquit him of the said charged [see : *M. Mammutti v. State of Karnataka*, AIR (1979) SC 1705.

Accordingly, the order under challenge of the High Court dated November 2, 1999 in Criminal Appeal No. 39 of 1992 is set aside and the appellant is acquitted of the charges framed against him.

The appeal is thus allowed.

R.P.

Appeal allowed.