(2012) 01 SHI CK 0019

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 276 of 2005

State of Himachal Pradesh — APPELLANT

Vs

Shri. Rafiq Mohammad — RESPONDENT

Date of Decision : 04-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 4
Penal Code, 1860 (IPC) — Section 420, 489B, 489C

Citation : (2012) 01 SHI CK 0019

Hon'ble Judges : Sanjay Karol, J;R.B. Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sanjay Karol, J.—This is the case of prosecution that on 23.8.2004, accused went to the shop of Keshav Sahni (PW-1) to purchase ten pieces of T-Shirts. Items were selected and price contracted. Accused tendered two currency notes of denomination of Rs. 1000/- each towards the sale consideration. PW-1 Keshav Sahni noticed that ?perhaps? currency notes handed over by the accused were not genuine, as such he informed the police. Rojnamacha (P-J) was recorded by the police on the basis of which F.I.R No. 264/2004 (Ex. PL) dated 7.12.2004 was registered with Police Station Solan under Sections 489-B, 489-C and 420 of Indian Peal Code. Police commenced investigation and SI Anant Ram (PW-9, Inspector(SHO) Smt. Babita Rana (PW-10) investigated the matter along with ASI Ratan Chand (PW-7) and H.C Madan Lal (PW-6). Four more currency notes of similar denomination were recovered from the possession of the accused. Deputy Manager of Punjab National Bank, Solan namely Mahesh Gambhir (PW-2) examined the currency notes and found the same to be fake and counterfeit. Police recorded the statement of witnesses. Police later got recovered eleven more currency notes of similar denomination from the residence of the accused. Recovery of currency notes were carried out in the presence of Robin Hatti, Chandermohan and Yoginder Kumar. Currency notes were sent to F.S.L, Junga where Meenakashi Mahajan (PW-8) Assistant Director Documents & photographic Division, gave opinion Ex. PK. With the completion of investigation, challan was presented in the Court for trial.

2. The accused was charged for having committed offences punishable under Sections 420, 489-B and 489-C of the Indian Penal Code to which he did not plead guilty and claimed trial.

3. In order to prove its case, prosecution examined ten witnesses and statement of accused u/s 313 of Code of Criminal procedure was also recorded.

4. Trial Court acquitted the accused of the charged offences. Hence, the present appeal.

5. In the instant case it is noticed that independent witness Mahesh Gambhir (PW-2), Anil Kumar (PW-3) and Sunil Kumar (PW-4) have not supported the prosecution case at all. Inspite of their extensive cross-examination nothing fruitful could come out in their testimony. They are witnesses of alleged recovery of currency notes from the premises/person of the accused. Yoginder Kumar(PW-5), another witness to recovery of the notes from the residence of accused, pursuant to disclosure statement made by the accused, has in no uncertain terms deposed that prior to his reaching the police station, accused already stood interrogated by the police. Now this renders the police story to be doubtful. This witness appears to be a stock witness as he admits that he has appeared as a police witness in number of cases. His testimony does not inspire confidence. He does not remember the purpose of having visited the police station on the date when alleged disclosure statement was made by the accused. Hence, prosecution has not at all been able to prove, by leading clear, cogent and convincing material to show that accused had made disclosure statement pursuant to which eleven counterfeit currency notes of denomination of Rs. 1000/- were actually recovered from his possession. In this regard, we find that testimony of police officials does not inspire confidence. There is material contradiction in this statement with regard to their presence as also presence of witnesses in the police station when the alleged disclosure statement Ex.(PH) was made by the accused or at the time of recovery of the said counterfeit notes.

6. According to Keshav Sahni (PW-1), accused had contracted to buy ten T-shirts for a sum of Rs. 1500/-. Accused gave him two currency notes of denomination of Rs. 1000/- each, which appeared to be fake. He telephonically informed the police who arrived on the spot and took into possession the same. Police then searched the accused and found four more currency notes of similar denomination. Police took the accused to the nearby Branch of Punjab National Bank where PW-2 Shri. Mahesh Gambhir (Deputy Manager), upon verification informed that notes are fake. Now this witness in his cross-examination admits that his version in Court that the notes appeared to be fake is not recorded in his statement Ex. PC, recorded by the police, with which he was confronted. We find that this witness has made improvements in Court. His version is also full of

embellishments and otherwise does not inspire confidence. He admits that police had interrogated the accused in his presence in the police station when none else was present on that day. Now this totally demolishes the prosecution case of disclosure statement having been made by the accused in the presence of PW-5. Not only that, this witness does not remember what all talks took place between him and the accused. He also does not remember what transpired after police had arrived at the spot. Police has also not examined Sh. Harjeet Singh, employee of PW-1, who admittedly was present in the shop and had shown the T-Shirts to the accused. In the instant case, corroboration of version of PW-1 by an independent witness was necessary. It appears that business transaction actually took place between the employee and the accused.

7. In the instant case, PW-1 has not been able to show as to in what manner accused had cheated or dishonestly induced or deceived him to deliver the T-Shirts. No goods were handed over to the accused. Even according to him, accused had tendered payment.

8. With regard to offences punishable under Sections 489-B and 489-C, there is nothing which has come on record to even prima-facie show that accused had reason to believe that currency notes allegedly recovered from his possession on the spot were in fact not genuine but counterfeit. Prosecution has not been able to establish that with such knowledge accused had endeavored to transact business with PW-1.

9. While dealing in similar circumstances apex Court in M. Mammutti Vs. State of Karnataka, has held that where counterfeit currency notes are recovered, presumption that such person knew or had reason to know that such notes are counterfeit, can be drawn only if it is shown that notes were of such a nature that on a mere look at them anyone would be convinced that they were counterfeit.

10. Further in Umashanker Vs. State of Chhattisgarh, , apex Court has held that there can be no presumption in law u/s 4 of the Indian Evidence Act 1872, that the currency notes are fake. Prosecution has to prove that accused was in the knowledge of the fact that currency notes were fake and not genuine. Significantly, Court cautioned that provisions of section 489(B) and 489(C) of Indian Penal Code were not meant to benefit unwary possessors or users.

11. In the instant case, none has come forward to state that on the face currency notes appear to be counterfeit. Expert Dr. Meenakshi Mahajan (PW-8) has also not opined to this effect and PW-2 has not supported the prosecution in this regard. Thus, prosecution has not been able to prove this case beyond reasonable doubt, by leading clear, cogent and convincing material piece of evidence.

12. Accused has had the advantage of having been acquitted by the Court below. Keeping in view the principles laid down in Md. Ankoos and Others Vs. The Public Prosecutor, High Court of A.P., it cannot be said that the Court below has not

correctly appreciated the evidence on record or that acquittal of the accused has resulted into travesty of justice. No ground for interference is called for. The present appeal is dismissed. Bail bonds, if any, furnished by the accused are discharged.

