

Pankaj Kumar Vs. State

Pankaj Kumar Vs. State

SooperKanoon Citation : sooperkanoon.com/1137679

Court : Delhi

Decided On : Apr-17-2014

Judge : Indermeet Kaur

Appellant : Pankaj Kumar

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment reserved on :02.04.2014. Judgment delivered on :17.04.2014 CRL.A. 233/2006 PANKAJ KUMAR Through Appellant Appellant with his counsel Mr. S.C. Bhuttan and Mr. Sandeep Bhutani, Advs. versus STATE Through + Respondent Mr. Varun Goswami, APP CRL.A. 244/2006 GULSHAN KHAN Through Appellant Appellant with his counsel Mr.I.A. Alvi and Mohd. Altaf, Advs. versus STATE Through + Respondent Mr. Varun Goswami, APP CRL.A. 245/2006 BABBU ALVI Through Appellant Appellant with his counsel Mr.I.A. Alvi and Mohd. Altaf, Advs. versus STATE NCT OF DELHI Through + Respondent Mr. Varun Goswami, APP CRL.A. 261/2006 KAMALDEEP NARULA Appellant Through Appellant with his counsel Mr. Shiv Charan Garg and Mr. Imran Khan, Advs. versus THE STATE NCT OF DELHI Through Respondent Mr. Varun Goswami, APP CORAM: HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

1 There are four appellants before this Court. Appellants Babbu Alvi, Pankaj Kumar and Kamaldeep Narula have been convicted for the offence under Section 489-C of the Indian Penal Code (IPC) and each of them have been sentenced to undergo RI for a period of 4 years and to pay a fine of Rs.5,000/- and in default of payment of fine, to undergo RI for 6 months. The fourth appellant Gulshan Khan has been convicted for the offence under Section 489-D of the IPC and has been sentenced to undergo RI for a period of 5 years and to pay a fine of Rs.10,000/- and in default of payment of fine to undergo RI for 1 year. The sentences were to run concurrently; benefit of Section 428 of the Cr.PC had been granted to the appellants. 2 The version of the prosecution is that pursuant to a secret information on 15.01.2003 at about 11:30 am SI Arvind Sagar (PW-11) was informed that Babbu Alvi and his associate would reach a place near Dwarka Mandir, Double Storey Quarters along with forged currency samples to show to his customers. A raiding party comprising of PW-11, HC Harpal (PW-6), HC Sunder Lal (PW-7), constable Dharmender (PW-8) and constable Dhiraj Singh (PW-3) was constituted. Ishtiyak (PW-5), the public witnesses was asked to join raid. At about 01:15 pm, Babbu Alvi and Gulshan Khan were overpowered and apprehended; this was at the instance of the secret informer. 3 From the personal search of Babbu Alvi, 6 forged currency notes in the denomination of Rs.100/- were recovered; three notes were bearing No.4NG02566; remaining three had number of 4NG02566. They were seized, sealed and taken into possession vide seizure memo Ex.PW-6/A. From the personal search of Gulshan Khan, 4 notes in the denomination of Rs.100/- were recovered having serial No.4NG02566. They were seized, sealed and taken into possession vide seizure memo (Ex.PW-6/B) Pursuant to the disclosure statement of Gulshan Khan (Ex.PW-6/C), he led the police party to his house at C-463, Sector-1, Rohini, Delhi from where a machine (Ex.P-2) used for preparation of forged currency notes along with printing material (Ex.P3) were recovered. This was seized vide memo Ex.PW-6/E. 4 On 16.01.2003, pursuant to the disclosure statement of accused Babbu Alvi (Ex PW-6/C), he led the police party to his residence from where he got recovered 22 currency notes of Rs.100/- each; out of these 22 notes, 6 currency notes had one number; 5 currency notes had one number, another 5 currency notes were also of same number and remaining 6 had only three numbers; they were seized, sealed

and taken into possession vide memo Ex.PW-6/F. 5 On 17.01.2003 pursuant to the disclosure statement of Gulshan Khan and at his pointing out, accused Kamaldeep Narula was arrested. From his personal search, 34 currency notes in the denomination of Rs.100/- each were recovered of which 11 notes had a number 4NG02566; 10 bore the number 4NG02566 and remaining 13 notes had a number of 4NG002566; they were seized, sealed and taken into possession vide memo Ex.PW-6/G. 6 Complicity of Pankaj Kumar was revealed in the disclosure statement of Kamaldeep Narula. From his possession 71 currency notes of Rs.100/- each were recovered of which 25 notes bore No.4NG02566; 21 bore the number of 4NG02566 and 23 had a number 4NG02566 and one note of number 4NG10648; remaining notes were having number of 4 NG10646. These notes were also seized, sealed and taken into possession vide memo Ex.PW-6/L. 7 In his disclosure statement, Pankaj Kumar had revealed that one note of Rs.100/- was spent on buying a cigarette packet from a shopkeeper (Pankaj Kumar S/o Ram Gopal examined as PW-10). This currency note was having a number 4NG025666 which was also seized, sealed and taken into possession vide memo Ex.PW-6/N. 8 The prosecution examined 12 witnesses of whom Deepa Verma (PW-12) had proved her report Ex.PW-12/A; after examining all the 138 notes which had been sent to her; they have been found to be forged. 9 In the statement of the accused persons recorded under Section 313 of the Cr.PC, they had stated that they have been falsely implicated in the present case; they are innocent. 10 No evidence was led in defence. 11 On the basis of the aforementioned evidence collected by the prosecution, the accused persons were convicted and sentenced as aforementioned. 12 Arguments have been addressed in detail. On behalf of appellant Pankaj Kumar, arguments had been addressed by Mr. S.C. Bhuttan. On behalf of appellant Babbu Alvi, arguments had been addressed by Mr. I.A.Alvi, Advocate. On behalf of appellant Kamaldeep Narula, arguments had been addressed by Mr. Shiv Charan Garg, Advocate. Learned counsel for the appellants has drawn attention of this Court to the versions of PW-6, PW-8 and PW-11 pointing out the various discrepancies in their versions primarily on the place from where the accused were arrested; attention having been drawn to the arrest memos; submission of the learned counsel for appellant Pankaj Kumar being that this arrest was effected from the residence of Pankaj where his parents

were also present but the signatures of his parents were not taken on the arrest memo and there is no explanation why the information of his arrest had not been given to his parents but has been given to his maternal uncle which is evident from his arrest memo. Further submission being that ingredients of Section 489-C of the IPC are not made out; the prosecution has failed to establish that the accused persons had knowledge of the fact that the notes in their possession were in fact counterfeit/forged; there is no such evidence of a conscious possession. Further submission being that since the appellants have been acquitted of the substantive offence under Section 120-B of the IPC in the absence of any conspiracy between the accused persons, the individual charge under Section 489-C of the IPC is also not maintainable. On behalf of appellant Gulshan Khan, additional argument has been addressed. It is pointed out that the printing machine which is purported to have been recovered at his instance from his house has essentially to be disbelieved for the reason that the recovery memo Ex.PW-6/A bore the signatures of the public witness Ishtiyak (PW-5) who has not supported the version of the prosecution; he is hostile. There is no explanation as to why no other public witness had signed the aforementioned documents. Recovery was effected from the residence of Gulshan Khan where his family members were also present in the house but signatures have not been obtained; the recovery has necessarily to be disbelieved. Appellants are entitled to a benefit of doubt and a consequent acquittal. In the alternate it has been argued that the offence under Section 489-C is punishable with imprisonment which may extend to 7 years or fine; submission being that fine is also an alternate punishment which is engrafted by the legislature and keeping in view the fact that all the appellants i.e. appellant Pankaj, appellant Babbu Alvi and appellant Kamaldeep Narula have already suffered incarceration for about 5 months and the offence relating to the year 2003 i.e. almost a decade old leniency should be awarded in the sentence. On behalf of appellant Gulshan Khan, the same plea has been set up; submission being that even in a case under Section 489-D of the IPC, there is no minimum sentence prescribed and appellant Gulshan Khan has also undergone incarceration for about 5 months; he should also be considered leniently on the point of sentence. For this proposition, reliance has been placed upon a judgment of a Bench of this Court reported as MANU/DE/4687/2013 Feroz Khan Vs. State. 13 Learned public prosecutor has

refuted these submissions. It is pointed out that the evidence of the prosecution has fully established the conscious possession of the appellants qua the forged currency notes; the fact that they were forged has been answered by the CFSL in its report Ex.PW-12/A; public witness (PW-5) although hostile has yet supported the version of the prosecution to the extent that he had admittedly joined the raid where the appellants were involved. Reliance has been placed upon AIR 2013 SC3344 Pramod Kumar Vs. State (GNCT) of Delhi 1982 and Crl. L. J.

751 Om Parkash Vs. The State to support a submission that the police witnesses should not be treated with distrust and if their testimony is found to be reliable and trustworthy, the Courts can act upon it. 14 Arguments have been heard. Record has been perused. 15 The information of the incident was given in the local police station by a secret informer pursuant to which a raiding party had been constituted headed by PW-6. PW-8 had also joined PW-6 in this raid. PW-6 has deposed that on 15.01.2003 pursuant to this information which has been received in the local police station PW-11 directed PW-6 to reach the spot where as per the secret information, Babbu Alvi was to come along with his accomplice; they being involved in a fake currency racket. PW-6 along with PW-8 reached the spot at about 12:05 pm; constable Dharmender (PW-8) and constable Sunder Lal had also joined them. On their asking, PW-5 had agreed to join the raid. At about 01:15 pm two persons coming from the side of ISBT were identified by the secret informer; they were overpowered. On the search of Babbu Alvi, 6 currency notes were recovered from his right pant pocket of which 3 GC notes were having a number of 4NG02566 and the remaining 3 had another number i.e. 4NG02566. PW-6 has further deposed that even on a face reading, the documents appeared to be forged as every note was having a picture of Mahatma Gandhi and the words Bhartiya Reserve Bank in Hindi and English were written upon it. These notes were seized, sealed and taken into possession vide memo Ex.PW-6/A. From the personal search of Gulshan Khan, 4 currency notes in the denomination of Rs.100/- were recovered; this was from his left pant pocket; all of them had the same number i.e. 4NG02566; further deposition of PW-6 being that these notes also appeared to be evidently forged as all of them had a picture of Mahatma Gandhi and the words Bhartiya Reserve Bank was written in Hindi and English on these notes. These notes were seized, sealed and taken into possession vide

memo Ex.PW-6/B. The rukka was sent through constable Dharmender for the registration of the FIR which was registered through ASI Joginder (PW-1) at 03:00 pm. Investigation was thereafter handed over to PW-11. Further deposition being that the disclosure statement of accused Gulshan Khan (Ex.PW6/C) disclosed that he could get the printing machine recovered which was being used for printing these fake notes; he led the police party to his residence at C-463, Sector-1, Rohini, Delhi; they reached the house of Gulshan Khan at 06:00 pm. Photographs of recovery which included Hewlett packard AC/DC adapter, head wire, blade/cutter, rubber stamp, handle, staple, scale stainless steel, black rubber gutka, HP Ink Jet print cartridge, paper cutter machine vide memo Ex.PW-6/E. The said articles were sealed after putting a seal of AS. Further deposition of PW-6 being that on 16.01.2003, he along with PW-11 reached the lock-up where Babbu Alvi and Gulshan had been kept. Pursuant to his disclosure statement, Babbu Alvi led the police party to his shop at A-1, 641, Sector-6, Rohini from where after opening the lock of his shop with the key, he got recovered 22 currency notes in the denomination of Rs.100/- which were lying in a garam patti; they were seized, sealed and taken into possession vide memo Ex.PW-6/F. On 17.01.2003, PW-6 along with PW-11 and PW-8 reached the police station. Accused Gulshan Khan had disclosed the name of his accomplice Kamaldeep. Further version of PW-6 being that Kamaldeep was apprehended and overpowered at Budh Vihar which was at the pointing out of Gulshan Khan and Babbu Alvi. On his personal search, 34 notes in the denomination of Rs.100/- were seized, sealed and taken into possession vide Ex.PW-6/G. Pursuant to the disclosure statement of Kamaldeep (Ex.PW-6/J), he disclosed the complicity of Pankaj Kumar and led the police party to his residence at 1808, Outer Lane, Mukherjee Nagar, Kingsway Camp from where Pankaj was arrested and from his possession 71 currency notes of Rs.100/- were seized, sealed and taken into possession vide memo Ex.PW-6/F. Further deposition of PW-6 being that on checking them, they were found to be counterfeit; the photograph of Mahatma Gandhi affixed on which Bhartiya Reserve Bank was written both in English and in Hindi. Disclosure statement of Pankaj Ex.PW-6/M was recorded. However, on 18.01.2003, pursuant to the disclosure statement of Pankaj and Kamaldeep, they led the police party to Mukherjee Nagar at betel shop of Pankaj (examined as PW-10) to whom one currency note had

been given by Pankaj to purchase a cigarette. This note was taken into possession vide memo Ex.PW-6/N. It had a number of 4 NG02566. 16 PW-6 was subjected to a lengthy cross-examination. He reiterated that Kamaldeep was arrested from Budh Vihar. Attention has been drawn to the cross-examination of PW-8; submission being that he has stated that Kamaldeep was arrested from Kingsway Camp. This is in contrast with the version of PW-6 who has stated that Kamaldeep was arrested from Budh Vihar. This has been vehemently highlighted by the learned counsel for appellant Kamaldeep to support a submission that this discrepancy is irreconcilable for which a benefit of doubt has to be given to Kamaldeep as his place of arrest is not certain. 17 This Court is not in agreement with this submission. PW-6 has categorically stated as on 17.01.2003, he had joined investigation with the accused persons and accused Babbu Alvi and Gulshan Khan had led the police party to Budh Vihar from where appellant Kamaldeep was overpowered. PW-8 has nowhere given a contrary version. PW-8 has explained that at the instance of Gulshan Khan and Babbu Alvi, the police party had reached Budh Vihar from where Kamaldeep was apprehended and after his arrest, he had led the police party to the residence of Pankaj which is at Kingsway Camp. This has been reiterated by PW-8 in two or three places; in one part of his cross-examination, he has stated that Kamaldeep was apprehended from Kingsway Camp; this is obviously due to an inadvertence. Trite it is to say that it is the entire version of a witness which has to be scrutinized & both coherently established that Kamaldeep was arrested from Budh Vihar; thereafter he had led the police party to the house of Pankaj which is at Kingsway Camp. 18 Version of PW-6 has been fully corroborated by PW-8 who was the other member of the raiding party. He has also deposed on the same lines. In fact nothing else has been pointed out in his version which could discredit his testimony. So also the testimony of PW-11 who was the Investigating Officer. He has also deposed on the same lines as PW-6 & PW-8. It is also not a case that the Investigating Officer had not joined any member of public. Member of public had been joined who was PW-5. PW-5 on oath admitted that he had joined the raid and had gone to the house of Gulshan Khan; apart from that he did not support the version of the prosecution and was permitted to be declared hostile by the learned public prosecutor. He however did not help the version of the prosecution. However, to

the limited extent i.e. PW-5 having joined the raid and having gone to the house of accused Gulshan Khan along with the police party is an admitted fact. Thus the judgment in 2013 VII AD (Delhi) 579 State Vs. Om Prakash & Others relied upon by the learned counsel for the appellants that public witnesses not having been joined, recovery becomes doubtful is not applicable as public witness (PW-5) was admittedly joined in this case but he has not supported the version of the prosecution. 19 PW-10 Pankaj (son of Ram Gopal) was another public witness to whom (as per the version of the prosecution) one currency note of Rs.100/- was given by accused Pankaj for purchase of cigarette; Ex.PW-6/N is the documentary evidence substantiating this version of the prosecution that this currency note (later on found to be forged) had been handed over by PW-10 to the investigating team; PW-10 having received it from accused Pankaj. To this extent, PW-10 has supported the version of the prosecution. He had admitted that he was assisting his brother at his tea shop which was at the footpath; one customer had given him note of Rs.100/- to purchase cigarette which was counterfeit and the same note was then recovered by the police from him vide memo Ex.PW-6/N. 20 PW-12 had proved the report Ex.PW-12/A detailing that all the 138 notes which had been examined by her pursuant to the instructions of her superior were fake and forged. The report Ex.PW-12/A evidences that these currency notes had been examined under different scientific instruments, there was absence of intaglio printing, lack of ultra violet fluorescent numbers, absence of security thread, absence of water marks and absence of micro printing and different nature of hidden image of 100 in green strips indicating the fake nature of currency notes. 21 Section 489-C of the IPC entails a conscious possession. A plain reading of this Section shows that the burden is on the prosecution to prove that at the time when the accused was possessing the note he knew that it was a forged one; the mere possession of it by him does not shift the burden to the accused to prove his innocent possession of the forged note; it must be established that the accused intended to use the forged or counterfeit currency note as a genuine or it might be used as genuine. 22 Vehement submission of the learned counsel for the appellants being that this has not been established by the prosecution and in the absence of which benefit of doubt has to accrue in favour of the appellants. For this proposition, reliance has been placed upon the judgment reported as AIR 1979 SC1705M. Mammutti Vs.

State of Karnataka as also another judgment reported as DRJ1985(9) 228 State (Delhi Admn.) Vs. Pawan Kumar Garg; submission being that in both these cases where this fact was not proved by the prosecution by shifting the burden to the accused under Section 106 of the Evidence Act would not be proper as the prosecution could not be relieved of establishing the ingredients of the offence alleged. The judgment reported in 1990 CrI. L.J215Madan Lal Sarma Vs. the State has also been highlighted. 23 There is no doubt to the proposition that there must be a conscious possession established by the prosecution qua the appellants before a conviction under Section 489-C of the IPC can be sustained against them. This conscious possession has to be established from the oral testimony of the witnesses as also the documentary evidence which is adduced. In the instant case, PW-6, PW-8 and Investigating Officer PW-11 have all stated that a bare face look of the notes which were recovered from each of the four accused persons clearly showed to be fake and forged. An explanation had also been furnished by PW-6; PW6 has stated that they appeared to be forged on the face of it as each of them had a picture of Mahatma Gandhi with the words Bhartiya Reserve Bank written upon it both in Hindi and English; all these notes also had identical numbers. Out of 22 notes which were recovered from Babbu Alvi (from his shop), 6 notes were having the same number; another 5 notes were also having the same number and the remaining 6 had only 3 numbers. All the 4 notes recovered from Gulshan Khan had the same number. Out of 34 notes recovered from Kamal (Ex.PW-6/G), 11 had the same number; another 10 also had the same number and the remaining 13 also had the same number. From Pankaj Kumar, 71 notes were recovered of which 25 currency notes had one number; 21 had another number; 23 bore another number as also one which has another number and the remaining notes also bore an identical number. The oral testimony of PW-6, PW-8 & PW-11 on this score was categorical that on a face look of the document itself, they appeared to be forged and fake; submission of the learned public prosecutor on this score being that the conscious possession qua the appellants thus becomes writ large. Report Ex.PW-12/A also recites that the number of the notes shows the absence of intaglio printing, lack of ultra violet fluorescent numbers, absence of security thread, absence of water marks and absence of micro printing as also different nature of hidden image of 100 in green strips thus being forged.

This report further shows that 6 parcels had been sent for analysis and after examination of the notes which were recovered from each parcel, a report was sent disclosing that all these 138 notes were counterfeit. 24 Submission of the learned counsel for the appellants on this report is that at serial No.(ii) of Ex.PW-12/A, 6 currency notes seized vide seizure memo (Ex.PW-6/A) all had the same number (4NG025664) but the seizure memo shows that 3 had a number of 4NG02566 and the remaining 3 had a number 4NG02566. There is no doubt that in exhibit (ii) (in Ex.PW-12/A) all the 6 currency notes have been given the same number. It is not the case of the appellants that these 6 notes were not a part of this exhibit; parcel No.(ii) related to seizure memo Ex.PW-6/A which was opened by the expert and all the 6 notes contained in that parcel as per this report were fake notes. This is thus obviously due to a typing error. Argument of the learned counsel for the appellants on this score is thus without any merit. 25 The next submission of the learned counsel for the appellants in this context is that no specific question has been put to the appellants about their conscious possession in their statement under Section 313 of the Cr.PC which again entitles the appellants to a benefit and for this purpose reliance has been placed upon the judgment of M. Mammutti (supra). This argument is bereft of force. 26 The very first question put to all the appellants read herein as under:

It is in evidence against you that on 15.1.03 at AATS Office, North East Distt. A secret information was received to Insp. Shiv Chand Pw in presence of PW HC Harpal that one Babu Alvi was involved in business of counterfeit currency notes and would come at about 1 pm at Double Storey, Welcome in Dwarka Mandir to hand over counterfeit currency note to his associate. What have you to say?. A27I do not know.

This question by itself clearly incriminates the accused of dealing with the counterfeit currency. The Supreme Court in AIR 1998 SC1693 Shobhit Chamar and Another Vs. State of Bihar while dealing with an argument in this context had noted that a challenge to a conviction based on non-compliance of Section 313 of the Cr.PC cannot be taken up for the first time in appeal unless it is shown that the appellants have suffered some kind of a prejudice. Relevant extract of this judgment reads herein as under:

We have perused all these reported decisions relied upon by the learned Advocates for the parties and we see no hesitation in concluding that the challenge to the conviction based on non-compliance of Section 313 Cr.P.C. first time in this appeal cannot be entertained unless the appellants demonstrate that the prejudice has been caused to them. In the present case as indicated earlier, the prosecution strongly relied upon the ocular evidence of the eye-witnesses and relevant questions with reference to this evidence were put to the appellants. If the evidence of these witnesses is found acceptable, the conviction can be sustained unless it is shown by the appellants that a prejudice has been caused to them. No such prejudice was demonstrated before us and, therefore, we are unable to accept the contention raised on behalf of the appellants.

2. Even presuming that there was no direct question put to the appellants on this score, the appellants have failed to show that any prejudice has been suffered by them. 29 Another argument propounded by the learned counsel for the appellant is that the FIR number finds mention in the seizure memos when the FIR had not been registered by that point of time and as such whether the documents were prepared on the spot or later on creates a doubt for which benefit must accrue to the appellants and for this proposition reliance has been placed upon 2000 CrL.J2645 Chand Khan Vs. State. This argument is also noted only to be negated. A Bench of this Court in 2013 II AD (Delhi) 288 Rattan @ Ratan Singh Vs. State of NCT of Delhi relying upon a judgment of the Supreme Court in JT2001(3) SC535 Radhey Shyam Vs. State of Haryana has answered this question as follows:

15. In any event the law as explained by the Supreme Court is that the mere writing of the FIR number on the arrest and search memos cannot entirely falsify those documents. Significant among the decisions is Radhey Shyam Vs. State of Haryana JT2001(3) SC535 Also, there is merit in the contention of the Respondent that there was no specific question put to the officers concerned in their cross-examination. What the counsel for the accused appears to have been done is to ask the witness whether the portion of the document from point A to A (which included the portion containing the FIR number) was written at the same time. This might be intelligent cross examination but if the defence wants to prove that the

FIR number was in fact written at a later point in time the witness ought to have been asked that question. The failure to elicit any answer from the witnesses on this point can only indicate that the defence may have been inconvenienced by the possible answer that might have been given by the witness or that the witness may have explained that the writing of the FIR number was only for cross verification of the details and therefore the FIR number was written at a subsequent point in time.

30 No cross-examination has been effected of the witnesses on this count. Thus mere mentioning of the FIR number on the seizure memos would not mean that the memos were prepared after the registration of the FIR. 31 The trial Court had rightly relied upon the police witnesses; there being nothing to show that their testimony cannot be relied upon. In fact in this context, the Apex Court has time and again observed that police witnesses are not to be treated with distrust and if their testimony is coherent and reliable, the Courts can act upon it. This has been so held The witnesses from the department of police cannot per se be said to be untruthful or unreliable. It would depend upon the veracity, credibility and unimpeachability of their testimony. This Court, after referring to *State of U.P. v. Anil Singh, State, Govt. of NCT of Delhi v. Sunil and another and Ramjee Rai and others v. State of Bihar*, has laid down recently in *Kashmiri Lal v. State of Haryana* that there is no absolute command of law that the police officers cannot be cited as witnesses and their testimony should always be treated with suspicion. Ordinarily, the public at large show their disinclination to come forward to become witnesses. If the testimony of the police officer is found to be reliable and trustworthy, the court can definitely act upon the same. If, in the course of scrutinizing the evidence, the court finds the evidence of the police officer as unreliable and untrustworthy, the court may disbelieve him but it should not do so solely on the presumption that a witness from the department of police should be viewed with distrust. This is also based on the principle that quality of the evidence.

32 The conspiracy of the accused to commit the offence is writ large. Thus in this background, the conviction of the appellants calls for no interference. 33 On the point of sentence, learned counsel for the appellants have pleaded mercy. It is

argued that the intent of the Legislature can be gathered from the engraftment of Section 489-C of the IPC which states that this offence is punishable with imprisonment which may extend to 7 years or with fine; the alternate of fine is an indication that when conviction is maintained the sentence of fine by itself may be imposed. Further submission being that each of the three appellants Pankaj Kumar, Babbu Alvi, Kamaldeep Narula have undergone incarceration for about 5 months and the sentence already undergone by them may be treated as the sentence. Needless to state that this position has been refuted by the learned public prosecutor. The convicted appellants were found to be in possession of several currency notes; from Babbu Alvi 28 forged notes were recovered, from Pankaj Kumar 71 forged notes were recovered and from Kamaldeep Narula 34 forged notes were recovered. Babbu Alvi's recovery is not only from his person but also from his shop. The Court has noted that the face reading of these notes by itself shows that the notes were forged. The accused had every intention to use them as genuine. PW-10 although hostile had admitted that one forged currency note had been given to him by one person which was later on recovered from PW-10; the recovery memo Ex.PW-6/N which was a proved document has recited that this forged note had been handed over to him by Pankaj Kumar. The judgment of Feroz Khan (supra) where the recovery was of 2 forged notes of Rs. 100 each and the offence relating back to 25 years would not be applicable to the facts of the instant case. Role of Gulshan Khan was still more acute. This Court has maintained his conviction under Section 489-D of the IPC. Not only 4 forged currency notes but also the printing machine and the accessory material required for printing forged notes were recovered from his residence. These Sections i.e. Sections 489-B and 489-C have been introduced into the Indian Penal Code by the Legislature for more adequately protecting currency notes and bank notes from forgery. If such offences go unpunished or a deterrent effect of the conviction is not passed on to the convict, the entire economy of the country would get eroded and the faith of the innocent public would be lost. 34 In this background keeping in view that the appellants Babbu Alvi, Pankaj Kumar and Kamaldeep Narula, who had undergone sentence of about less than 5 months for the offence which is punishable with imprisonment up to 7 years cannot be let off. Accordingly, while maintaining their conviction but setting aside the imprisonment of RI for 4

years which has been imposed by the Sessions Judge on each of the aforementioned convicts, the appellants Babbu Alvi, Pankaj Kumar and Kamaldeep Narula are sentenced to undergo RI for a period of 14 months each and to pay an additional fine of Rs.30,000/- each in default of payment of fine to undergo SI for 3 months. Qua Gulshan Kumar, whose conviction has been maintained under Section 489-D of the IPC, while maintaining the conviction his sentence is modified from RI5year to RI20months with an additional fine of Rs.50,000/- and in default of payment of fine to undergo SI for a period of 4 months. Benefit of Section 428 Cr.P.C. will be granted to the appellants. 35 Bail bonds are cancelled; sureties are discharged. Appellants be taken into custody to serve the remaining sentence. 36 Appeals are disposed of in the above terms. INDERMEET KAUR, J APRIL17 2014/A

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com