

Shambhu Kumar and Vs. State of Bihar

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Court : Patna

Decided On : Jan-18-2008

Judge : Shyam Kishore Sharma, J.

Acts : [Customs Act, 1962](#) - Sections 110 and 114; Code of Civil Procedure (CPC) - Sections 313; India Penal Code (IPC) - Sections 34, 420, 489, 489A, 489B and 489C

Appeal No. : Criminal Appeal No. 238 of 2004 (SJ)

Appellant : Shambhu Kumar and Rajesh Kumar

Respondent : State of Bihar

Advocate for Def. : Ali Mozaffar, APP

Advocate for Pet/Ap. : Kanhaiya Pd. Singh, Sr. Adv. and Atal Bihari, Adv.

Disposition : Application dismissed

Judgement :

Shyam Kumar Sharma, J.

1. Appellants Shambhu Kumar and Rajesh Kumar had filed this appeal against the judgment of conviction and order of sentence dated 25.3.2004 and 29.3.2004 passed by the VIIIth Additional Sessions Judge, Muzaffarpur in Sessions Trial No.

575 of 2002 whereby the appellants were convicted for the offence under Section 489A of the IPC and sentenced them to undergo, R.I. for 10 years and fine of Rs. 10,000/- each and further both the appellants were sentenced to undergo R.I. for 10 years and fine of Rs. 10,000/- each under Section 489B IPC. Further both the appellants were sentenced to undergo R.I. for 7 years under Section 489C IPC and further both the appellants were sentenced to undergo R.I. for 7 years and fine of Rs. 5,000/- each under Section 420 IPC. Further in default of payment of fine each appellants were ordered to undergo R.I. for one year. It has also been ordered that the all the sentences shall run concurrently.

2. On the report of Inspector Customs Division, Muzaffarpur addressed to the Officer In Charge, Motipur Police Station the case was registered on the allegation that the Preventive team of Customs Division, Muzaffarpur intercepted the appellants while they were going through the bus Ratan Rath carrying registration number 7752 which was coming from Raxaul to Patna. The appellant No. 1 was carrying 60 pieces of fake Indian currency whereas the appellant No. 2 was carrying 57 pices of Fake Indian currency of the denomination of Rs. 500/-. The total amount which was said to have been carried is Rs. 58500/-. The appellants were apprehended and brought to the customs office, Muzaffarpur. Recovered currency were seized under Section 110 of the [Customs Act, 1962](#) and the appellants were arrested under Section 114 of the Customs Act 1962 and were produced before the Presiding Officer, Economic Offences court, Muzaffarpur and were remanded to the Judicial Custody. On the basis of aforesaid statement Motipur P.S. Case No. 27 of 2002 was registered under Sections 420, 489A, 489B, 489C of the Indian Penal Code. After investigation the charge sheet was submitted. Charges under Section 420, 489A, 489B and 489C/34 of the Indian Penal were framed against the appellants. The witness Shivnarayan Ram was examined on behalf of the prosecution. Alleged fake currency were produced before the Court and were exhibited. Statement of the appellants under Section 313 Cr.P.C. was recorded. The Presiding Officer after scrutinizing the facts and the plea of the appellants found the case true under Section 420, 489 Appellant 489B, 489C/34 of the IPC and the sentence was pronounced.

3. The learned Counsel for the appellants has submitted that no case under Section 420, 489A, 489B and 489C IPC is made out. The case at best comes under Section 489A IPC for which maximum punishment is 7 years. The appellant has remained in custody for about 6 years.

Power of appeal by the Criminal Courts is mentioned in Chapter XXXII of the Cr.P.C. A person is entitled to file an appeal from the judgment of conviction but it also restrains of filing the appeal in some cases.

4. According to the Section 375 of the Cr.P.C. no appeal can be filed if an accused pleads guilty. It is being reproduced below:

375. No appeal in certain cases when accused pleads guilty.- Notwithstanding anything contained in Section 374, where an accused person has pleaded guilty and has been convicted on such plea, there shall be no appeal.-

(a) if the conviction is by a High Court; or

(b) if the conviction is by a Court of Session, Metropolitan Magistrate or Magistrate of the first or second class, except as to the extent or legality of the sentence.

5. The appellant has pleaded guilty before the court of Sessions, so only quantum of sentence has to be considered. Nothing has been brought on the record from which any inference could be drawn that the appellants were previously convicted or were accused in any case from before. It appears from the record that the appellants were first of fenders. On merit the case cannot be re-opened on the question of sentence. The appellants have undergone in custody about six years. So, I am not inclined to modify the sentence and the period undergone by the appellants shall be deemed to be sufficient for the ends of justice.

6. Accordingly, with the aforesaid modification in the sentence the appeal is dismissed. The appellants are directed to be released forthwith if not wanted in any other case.