IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.727 of 2004

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Binod Kumar Bhagat, son of late Ram Swaroop Bhagat, resident of village – Kaneji, tola – Bindeshwaripatti, P.S. - Vaaishali (Belsar O.P.), District – Vaishali.

... ... Appellant

Versus

The State of Bihar

... ... Respondent

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Appearance :
For the Appellant/s : Mr.Raju Patel, *Amicus Curiae*
For the Respondent/s : Mrs.Anita Kumari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT
Date : 29-11-2025

From perusal of the order dated 28.08.2024, it appears that Mr. Abhishek Kumar, was appointed as *Amicus Curiae*, but could not appeared in Court.

2. Therefore, out of present advocates in open Court, Mr. Raju Patel, learned counsel shows his willingness to assist this Court as *Amicus Curiae*.

3. In view of the aforesaid, Mr. Raju Patel, learned counsel is appointed as *Amicus Curiae* for the present appeal.

4. From perusal of record, it appears vide order dated 03.01.2005, appellant was granted bail by one of the learned coordinate Bench of this Court.

5. This memo of appeal has been filed on behalf of

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the sole appellant under section 374(2) of the Code of Criminal Procedure (in short the, 'Cr.P.C.') against the judgment of conviction dated 05.10.2004 and order of sentence dated 06.10.2004 passed in Sessions Trial No. 392/2001 arising out of Goraul P.S. Case No. 134 of 2000 by learned 6th Additional Sessions Judge, Vaishali at Hajipur, whereby and whereunder the appellant was convicted for the offences punishable under section 489(C) of the I.P.C. and sentenced to undergo rigorous imprisonment for seven years and fine of Rs. Five thousand. In case of default in payment of fine, the trial court sentenced the appellant for further period of six months R.I.

6. The brief facts of the case is that the informant, who was the then Officer-In-Charge of Goraul P.S., while he was on duty on 13.10.2000 at about 8:00 P.M., got secret informant that some persons are dealing in counterfeit currency notes in Mela. The informant alongwith other police officials reached there and caught hold of a suspicious man roaming in the Mela area, and, on inquiry, he disclosed his name as Binod Kumar Bhagat (the petitioner). The informant

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alleged that on being searched the apprehended accused (appellant) was found in possession of 23 currency notes of Rs. 100/-, which found fake and forged. Accordingly, seizure list was prepared in presence of two independent witnesses. Binod Kumar Bhagat, on being asked, disclosed that the fake notes was handed over to him by one Ramesh Paswan for use it in the *Malang Asthan Mela*.

7. On the basis of aforesaid written report, police registered formal FIR being Goraul P.S. Case No. 134 of 2000 was registered under sections 419, 420, 489(A)/34 of the Indian Penal Code. After conclusion of investigation, police submitted charge-sheet against him under section 489(A), 489(C), 420/34 of the I.P.C. Thereafter, cognizance of the offences was taken and the case was committed to the court of session.

8. Learned trial court explained the aforesaid charges to appellant/accused, which he pleaded “not guilty” and claimed to be tried.

9. To establish its case before the learned trial court, the prosecution altogether examined total of thirteen

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(13) witnesses and they are Satyendra Narayan Singh (PW-1), Ganesh Mahto (PW-2), Binod Kr. Kushwaha (PW-3), Ram Ekbal Sah (PW-4), Lalu Sah (PW-5), Raja Sao (PW-6), Subodh Kumar, (PW-7), Madan Prasad Singh (PW-8), Madan Paswan (PW-9), Md. Shoaib Alam (PW-10), Suman Rai (PW-11), Krishna Kant Sharma (PW-12) and Umesh Kumar Pandey (PW-13).

10. The prosecution has also produced certain documents viz. FIR Fard-e-beyan – Exhibit – 2, Envelop – Exhibit-I, 23 Notes of Rs. 100 – Exhibit – II to II/22 (Material Exhibit), Envelop, R.B.I. Report – Exhibit – 5, Statement of Binod Kumar Bhagat – Exhibit – 6 and Seizure List – Exhibit 1, 1/1 & 3 respectively.

11. After examination of prosecution witnesses and by taking note of evidence as surfaced during trial, statement of accused/appellant was recorded under Section 313 of the Cr.P.C., which was denied by the appellant in totality by claiming his complete innocence and false implication.

12. On the basis of evidences as surfaced during the trial, the learned trial court convicted and sentenced the

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appellant/convict, in aforesaid terms. Being aggrieved of which present appeal was preferred.

13. Hence, the present appeal.

14. Mr. Raju Patel, learned *amicus curiae* appearing on behalf of the appellant, submitted that judgment of conviction as recorded by the learned trial court appears questionable for several reasons. Explaining the reasons, it is submitted that there is major contradiction between testimony of PW-1 & PW-8, who is informant of this case for the reasons that PW-1 deposed that appellant/accused was searched by one Mahesh Babu, but PW-8 deposed that the appellant/accused was searched by him. Interestingly, Mahesh Babu was not made examined during the trial. It is also pointed out that the I.O. of this case namely, S.K. Jha was also not examined before the learned trial court. It is also pointed out by Mrs. Singh that despite of availability of informant the fard-e-beyan was exhibited by formal witness PW-7 namely, Subodh Kumar, who was advocate clerk.

15. In this context, Mr. Patel relied upon legal report of Hon'ble Supreme Court as available through **Rajesh Patel**

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v. State of Jharkhand reported in **(2013) 3 SCC 791** and **Umashankar Vs. State of Chhattisgarh** reported in **(2001) 9 SCC 642.**

16. It is submitted by learned *amicus curiae* that interestingly, confessional statement of appellant/accused was proved during the trial by PW-13, which made before the police, having no evidentiary value and, therefore, same cannot be said relevant as to arrive on the conclusion that none else than the appellant committed the offence.

17. It is pointed out that interestingly seizure list witnesses i.e. PW-5 and PW-6 turns hostile and, therefore, the entire seizure of counterfeit currency becomes doubtful and in view of same the judgment of conviction, as recorded by learned trial court, is liable to be set-aside/quashed.

18. Mrs. Anita Kumari Singh, learned A.P.P. for the State, while opposing the appeal, submitted that on the basis of minor contradiction the judgment of conviction cannot be viewed with doubt. It is submitted that seized counterfeit currency notes was duly exhibited before the learned trial court by PW-12 namely, Krishna Kant Sharma, retired

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Treasurer of R.B.I.

19. Mrs. Singh, submitted that non-examination of I.O. is not fatal every time. It is also submitted that PW-11 namely, Suman Rai upon scientific test, found the entire seized counterfeit currency fake, which was exhibited through Exhibit – 5.

20. I have perused the records of learned trial court carefully and gone through the evidences available on record and also considered the rival submissions as canvassed by learned counsel appearing on behalf of the parties. It would be apposite to reproduce section **489(C) of the I.P.C.** for better understanding of law, which reads as under:

> **"489C. Possession of forged or counterfeit currency-notes or bank-notes.—**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."

21. It appears from perusal of record and out of submission as submitted by learned *amicus curiae* and

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learned A.P.P., that Ganesh Mahto (PW-2), Binod Kr. Kushwaha (PW-3), Ram Ekbal Sah (PW-4) turns hostile during the trial and nothing surfaced out of their testimony which may be used for the purpose of contradiction or corroboration qua the testimony of such witnesses, who supported the case of the prosecution during the trial, therefore, testimony of these witnesses appears not relevant.

22. As far testimony of PW-5 and PW-6 are concerned, they are Lalu Rai and Raja Sah respectively who are seizure list witnesses but they turned hostile during the trial by deposing that no counterfeit note as alleged was recovered before them and thus, entire case of prosecution qua recovery of counterfeit case becomes doubtful. They only identified their signatures.

23. It also appears that informant i.e. PW-8 namely, Madan Prasad Singh deposed before this Court but despite of his availability the FIR in issue was exhibited under the identification of formal witness namely, Subodh Kumar, who was examined as PW-7 and was an advocate clerk and have no occasion to know about the contents or also the

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signature of I.O. etc. on FIR. In view of same, the FIR in issue also not appears duly proved during the trial.

24. It also appears that during trial PW-1 categorically stated that search upon appellant/accused was made by one Mahesh Babu, who was constable and present there, but the informant (PW-8) categorically deposed that it was he who searched upon the appellant/accused. This major contradiction qua search upon accused/appellant in view of testimony of PW-5 and PW-6 who said that nothing was recovered before them, making entire seizure of counterfeit currency doubtful.

25. Here, it would be necessary to reproduce **para 18** of **Rajesh Patel case (supra),** which reads as under for better understanding of law:

> **"18.** Further, neither the doctor nor the IO has been examined before the trial court to prove the prosecution case. The appellant was right in bringing to the notice of the trial court as well as the High Court that the non-examination of the aforesaid two important witnesses in the case has prejudiced the case of the appellant for the reason that if the doctor would have been examined he could have elicited evidence about any injury sustained by the prosecutrix on her private part or any other part of her body and

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> also the nature of hymen layer, etc. so as to corroborate the story of the prosecution that the prosecutrix suffered unbearable pain while the appellant committed rape on her. The non-examination of the doctor who had examined her after 12 days of the occurrence has not prejudiced the case of the defence for the reason that the prosecutrix was examined after 12 days of the offence alleged to have been committed by the appellant because by that time the sign of rape must have disappeared. Even if it was presumed that the hymen of the victim was found ruptured and no injury was found on her private part or any other part of her body, finding of such rupture of hymen may be for several reasons in the present age when the prosecutrix was a working girl and that she was not leading an idle life inside the four walls of her home. The said reasoning assigned by the High Court is totally erroneous in law."

26. It would be apposite to reproduce **para 8** of **Umashankar case (supra),** which reads as under:

> **"8.** A perusal of the provisions, extracted above, shows that *mens rea* of offences under Sections 489-B and 489-C is "knowing or having reason to believe the currency notes or banknotes are forged or counterfeit". Without the aforementioned mens rea selling, buying or receiving from another person or otherwise trafficking in or using as genuine forged or counterfeit currency notes or banknotes, is not enough to constitute offence under Section 489-B

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> IPC. So also possessing or even intending to use any forged or counterfeit currency notes or banknotes 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. The High Court, however, completely missed this aspect. The learned trial Judge on the basis of the evidence of PW 2, PW 4 and PW 7 that they were able to make out that the currency note alleged to have been given to PW 4 was fake, "presumed" such a mens rea. On the date of the incident the appellant was said to be an eighteen-year-old student. On the facts of this case the presumption drawn by the trial court is not warranted under Section 4 of the Evidence Act. Further 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 the 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 IPC and acquit him of the said charges (see: *M. Mammutti* v. *State of Karnataka* [(1979) 4 SCC 723 : 1980 SCC (Cri) 170 : AIR 1979 SC 1705])."

27. In view of aforesaid, the testimony of PW-11, PW-12 who are the retired treasurer of R.B.I., who reported about the currency as counterfeit currency and also who

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identified the seized currency notes before the learned trial court appears not so relevant to the extent that on the basis of their deposition only it can be arrived on the conclusion that the seized counterfeit currency was recovered from possession of this appellant/accused without any doubt.

28. Hence, the judgment of conviction dated 05.10.2004 and order of sentence dated 06.10.2004 passed in Sessions Trial No. 392/2001 arising out of Goraul P.S. Case No. 134 of 2000 by learned 6th Additional Sessions Judge, Vaishali at Hajipur, is hereby set-aside.

29. Accordingly, this appeal stands allowed.

30. Since, the appellant/accused is on bail, he is discharged from his liabilities of respective bail bonds. Sureties stands discharged.

31. Fine, if any, paid, be returned to the appellant/accused henceforth.

32. Office is directed to send the LCR of this appeal to the court concerned.

33. Let a copy of this judgment be sent to the learned trial court forthwith.

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34. The Patna High Court Legal Services Committee is, hereby, directed to pay Rs. 5,000/- (Rupees Five Thousand Only) to Mr. Raju Patel, learned *Amicus Curiae* in Criminal Appeal (SJ) No. 727 of 2004, as consolidated fee for rendering his valuable professional service for the disposal of present appeal.

(Chandra Shekhar Jha, J.)

Rajeev/-

AFR/NAFR	**AFR**
CAV DATE	**NA**
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