

**REVISIONAL CRIMINAL.**

*Before Tek Chand J.*

BUR SINGH—Petitioner.

*versus*

THE CROWN—Respondent.

Criminal Revision No. 1527 of 1929.

1930

Jan. 31.

*Indian Penal Code, 1860, section 489-C—Forged Currency Notes—mere possession of—whether criminal—burden of proof of the offence.*

*Held*, that mere possession of a forged note is not an offence under the Indian Penal Code. In order to bring a case within the purview of section 489-C it is not only necessary to prove that the accused was in possession of forged notes, but it should be further established: (a) that at the time of his possession he knew the notes to be forged or had reason to believe them to be so; and (b) that he intended to use them as genuine.

*And*, that the *onus* lies on the prosecution to prove circumstances which lead clearly, indubitably and irresistibly to the inference that the accused had the intention to foist the notes on the public. Such intention can be proved by collateral circumstances such as that the accused had palmed off such notes before, or that he was in possession of such and similar notes in such large numbers, that his possession for any other purpose is inexplicable.

*Application for revision of the order of Lala Munshi Ram, Sessions Judge, Ferozepore, dated the 5th September 1929, affirming that of Rai Sahib Lala Shankar Das, Luthra, Sub-Divisional Magistrate, 1st class, Moga, dated the 26th June 1929, convicting the petitioner.*

MEHTAB SINGH, for Petitioner.

ABDUL RASHID, Additional Government Advocate, for Respondent.

TEK CHAND J.—The petitioner Bur Singh, *Jat* TEK CHAND J.  
of *mauza* Ransi Kalan in the Moga Tahsil of the

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Ferozepore district, has been convicted under section 489-C, Indian Penal Code, for having in his possession three forged currency notes of Rs. 100 each, knowing them to be forged and intending to use them as genuine, and has been sentenced to rigorous imprisonment for four years. His appeal has been rejected by the Sessions Judge and he has preferred a petition for revision to this Court.

The facts found are that certain Excise officials of the Ferozepore District, having received information that the petitioner was a smuggler of opium, searched his house on the morning of the 21st April, 1929. A large quantity of opium was found in his possession for which he was not able to offer any satisfactory explanation. For this offence he was tried and convicted under section 9 (c) of the Opium Act and that conviction has been affirmed by the High Court. In the course of this search three forged currency notes of Rs. 100 each were also found in an iron safe belonging to the petitioner, and he was separately tried under section 489-C and has been convicted and sentenced as stated above.

It should be borne in mind that mere possession of forged notes is not an offence under the Indian Penal Code. In order to bring a case within the purview of section 489-C of the Indian Penal Code it is not only necessary to prove that the accused was in possession of forged notes, but it should be further established (a) that at the time of his possession he *knew* the notes to be forged or had reason to believe them to be so, and (b) that he *intended* to use them as genuine or that they might be used as genuine.

The learned trial Magistrate thought that the very appearance of the notes showed that the peti-

tioner must have known that they were forged, and as to the requisite intention he remarked that "when forged notes were recovered from his (petitioner's) possession he must have kept them with intent to use them at a suitable occasion. There is no point in his having them in his possession otherwise." The learned Sessions Judge has endorsed this view and has held that the necessary intention must be presumed as it has not been shown that the petitioner was keeping the notes "merely for the sake of show or curiosity." In my opinion this reasoning is defective and practically throws upon the accused the *onus* of proving that he did not have the intention to palm off the notes as genuine.

There can be no doubt that under the law, as it stands at present, the *onus* lies on the prosecution to prove circumstances which lead clearly, indubitably and irresistibly to the inference that the accused had the intention to foist the notes on the public. As pointed out by Dr. Gour in paragraph 5456 of his *Penal Law of India* "such intention, relating as it does to a future conduct, could only be proved by collateral circumstances, such as that the accused had palmed off such notes before, or that he was in possession of such and similar notes in such large numbers that his possession for any other purpose is inexplicable."

On the present record no such or similar circumstance can be discovered. On the other hand it seems quite likely that the petitioner, who is an illiterate *Jat*, might have received these notes from a purchaser of illicit opium, and might himself have been deceived. P. W. 10, Muhammad Latif, Claims Clerk, Currency Office, who has been produced as an expert by the prosecution has stated that "one

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might take these notes to be genuine notes at night in insufficient light.”

In my opinion the prosecution have failed to establish all the ingredients of the offence. I, therefore, accept the petition, set aside the conviction and sentence and acquit the petitioner.

N. F. E.

*Revision accepted*

REVISIONAL CRIMINAL.

*Before Fforde and Zafar Ali JJ.*

AMIN LAL (COMPLAINANT) Petitioner

*versus*

THE CROWN THRO. JAGAT NARAIN AND ANOTHER  
(ACCUSED) Respondent.

1930

Feb. 10.

Criminal Revision No. 1158 of 1929.

*Criminal Procedure Code, Act V of 1898, sections 250 and Schedule II, column 8—Compensation—whether can be awarded by Magistrate with section 30 powers for offence triable by Sessions Court—order by such Magistrate awarding joint compensation for two offences, one triable by Sessions Court and the other by a Magistrate—whether legal in part.*

*Held*, (1) that section 250 of the Criminal Procedure Code is not applicable to offences triable only by a Court of Sessions, according to column 8 of Schedule II,

(2) that where a complaint brings joint accusations of both classes of offence and the Magistrate with section 30 powers finds both to be false he is competent to award compensation only in respect of offences triable by a Magistrate;

*Crown v. Hamir Chand* (1), *Crown v. Qadru* (2), *Muhammad Hayat v. Bhola* (3), *Ramzan v. Mst. Rajan* (4), and *Ma E Dok v. Maung Po Than* (5), followed.

(3) that if compensation is awarded for both kinds of offences and it is not possible to apportion the amount so

(1) 14 P. R. (Cr.) 1902.

(3) 1 P. R. (Cr.) 1919.

(2) 26 P. R. (Cr.) 1902.

(4) 21 P. W. R. (Cr.) 1910.

(5) (1922) 1-Burma L. J. 88.