

115. *Sumat Prasad Jain v Sheojanam Prasad*, AIR 1972 SC 2488 [LNIND 1972 SC 399] : (1973) 1 SCC 56 [LNIND 1972 SC 399] .

## THE INDIAN PENAL CODE

### CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

Of **108.** [\*\*\*] Property and Other Marks

[s 487] Making a false mark upon any receptacle containing goods.

Whoever makes any false mark upon any case, package or other receptacle containing goods, in a manner reasonably calculated to cause any public servant or any other person to believe that such receptacle contains goods which it does not contain or that it does not contain goods which it does contain, or that the goods contained in such receptacle are of a nature or quality different from the real nature or quality thereof, shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

#### COMMENT.—

This section is more comprehensive than sections 482 and 486. The fraudulent making of false marks of any description on goods for the purpose of deceiving public servants, such as customs officers, is punishable under this section.

**108.** *Amendment.*—The word "trade" has been omitted by the [Trade and Merchandise Marks Act, 1958](#) (Act XLIII of 1958), section 135 and Sch. The Act came into force on 25 November 1959.

## THE INDIAN PENAL CODE

### CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

Of **108.** [\*\*\*] Property and Other Marks

[s 488] Punishment for making use of any such false mark.

Whoever makes use of any such false mark in any manner prohibited by the last foregoing section shall, unless he proves that he acted without intent to defraud be punished as if he had committed an offence against that section.

#### COMMENT.—

This section punishes the making use of a false mark. The preceding section punishes the making of such a mark.

**108.** *Amendment.*—The word "trade" has been omitted by the [Trade and Merchandise Marks Act, 1958](#) (Act XLIII of 1958), section 135 and Sch. The Act came into force on 25 November 1959.

## THE INDIAN PENAL CODE

### CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

#### Of **108.** [\*\*\*] Property and Other Marks

**[s 489] Tampering with property mark with intent to cause injury.**

Whoever removes, destroys, defaces or adds to any property mark, intending or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

#### **COMMENT.—**

This section punishes the tampering with a property mark, criminal intention or knowledge on the part of the accused is necessary.

**108.** *Amendment.*—The word "trade" has been omitted by the [Trade and Merchandise Marks Act, 1958](#) (Act XLIII of 1958), section 135 and Sch. The Act came into force on 25 November 1959.

## THE INDIAN PENAL CODE

### CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

#### Of Currency-Notes and Bank-Notes

[s 489A] Counterfeiting currency-notes or bank-notes.

[Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any currency-note or bank-note, shall be punished with <sup>116</sup>. [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**Explanation.**—For the purposes of this section and of sections <sup>117</sup>. [489B, 489C, 489D and 489E], the expression "bank-note" means a promissory note or engagement for the payment of money to bearer on demand issued by any person carrying on the business of banking in any part of the world, or issued by or under the authority of any State or Sovereign Power, and intended to be used as equivalent to, or as a substitute for money.]

#### COMMENT.—

The term counterfeit is defined in section 28 of the Code. Circulation of counterfeit currency would cause irreparable harm to our economy. Existence of a parallel economy would be highly detrimental to the growth of the nation. It affects the society as a whole. Offences affecting the people at large are to be viewed in a different angle. In such cases, harm would be caused not to an individual or to a few individuals. The adverse impact of trafficking in counterfeit currency in a large scale would be disastrous. It would appear that the society does not cast much of a stigma on people, who deal with counterfeit currency.<sup>118</sup> Sections 489A, 489B, 489C and 489D were introduced in order to provide more adequately for the protection of currency-notes and banknotes from forgery. Under the [IPC, 1860](#), which was passed prior to the existence of a paper currency in India, currency-notes were not protected by any special provisions, but merely by the general provisions, applying to the forgery of valuable securities. Before these sections were introduced charges for forging currency-notes had to be preferred under section 467, for uttering them under section 471, and for making or possessing counterfeit plates under section 472. The provisions of section 467 afforded sufficient means for dealing both with forgery generally and with forgery of currency-notes. But it was at times difficult to obtain a conviction under the other sections. This provision says that the prosecution is required to prove that the accused was knowingly performing any part of the process to counterfeit currency-notes. It is needless to mention that for proving the offence of conspiracy, there must be some convincing evidence to the prosecution to prove that it was pre-arranged plan of all or some of the accused either for preparing fake currency or for their circulation. Only on the basis of circumstance like some persons were found in possession of counterfeit currency-notes at or about the same time, inference cannot be drawn that all of them had engaged themselves in a conspiracy. However, if an accused is found in possession of counterfeit currency-notes, it is up to him to furnish satisfactory explanation regarding the possession. This proposition is also applicable in respect of

the material which can be used for preparing fake currency-notes and the process which can be used for making fake currency-notes. If there is no such explanation, a person found in possession of such material and counterfeit currency-notes can be convicted for offence under [section 489-A of IPC](#).<sup>119.</sup>

The object is not only to protect the economy of the country but also to provide adequate protection to currency-notes and banknotes.<sup>120.</sup> The section deals not only with the complete act of counterfeiting, it also covers cases where the accused performs any part of the process of counterfeiting.<sup>121.</sup>

### **[s 489A.1] Counterfeit currency-notes and terrorism.—**

The Act 3 of 2013 introduced amendment in the [Unlawful Activities \(Prevention\) Act 1967](#) to include the act of doing damage to the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material within the purview of terrorism. Thus, the act of dealing with high quality counterfeit Indian currency-notes and coins with the intention of threatening the economic security of India is viewed as a terrorist act. (For details see UA (P) Act, 1967, as amended by Act 3 of 2013.)

### **[s 489A.2] Foreign currency.—**

The Supreme Court in *State of Kerala v Mathai Vergheese*<sup>122.</sup> held that the expression 'any currency-note' refers to all currency-notes and cannot be confined only to Indian currency. The purpose of the provisions is to maintain market respectability of the currency by assuring people that notes being offered to them are genuine and not worthless pieces of paper. The Legislature could not have intended to exclude from the protection counterfeiting of currency-notes issued by foreign States. Further, the expression 'bank-note' as used by sections 498A–498E would include a dollar bill or note because they are also issued under the authority of a State or sovereign power. This section is similar to sections 231 and 255.

### **[s 489A.3] CASES.—**

Where many fake currency-notes, hundreds of stamp and some material required for preparing fake currency-notes were allegedly recovered from room and also from person of appellant, and evidence and material was seized by police. The Court ruled out possibility of implanting the material by police for falsely implicating the accused. It was held that accused appellant liable to be convicted under [section 489-A, IPC, 1860](#).<sup>123.</sup>

<sup>116.</sup> Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

<sup>117.</sup> Subs. by Act 35 of 1950, section 3 and Sch II, for "489C and 489D".

118. *Ahammed v State*, 2010 Cr LJ 1797 (Ker).
119. *Narayan Maruti Waghmode v State of Maharashtra*, 2011 Cr LJ 3318 (Bom).
120. *K Hashim v State of TN*, (2005) 1 SCC 237 [LNIND 2004 SC 1142] : AIR 2005 SC 128 [LNIND 2004 SC 1142] .
121. *K Hashim v State of TN*, 2005 Cr LJ 143 : (2005) 1 SCC 237 [LNIND 2004 SC 1142] : AIR 2005 SC 128 [LNIND 2004 SC 1142] .
122. *State of Kerala v Mathai Vergheese*, (1986) 4 SCC 746 [LNIND 1986 SC 461] : AIR 1987 SC 33 [LNIND 1986 SC 461] : 1987 Cr LJ 308 ; *Surinder Pal v State of Punjab*, 2009 Cr LJ 4100 (P&H), counterfeiting US dollars, accused convicted. *K Hashim v State of TN*, 2005 Cr LJ 143 : AIR 2005 SC 128 [LNIND 2004 SC 1142] : (2005) 1 SCC 237 [LNIND 2004 SC 1142] , the evidence of accomplice, the artist, provided material for corroboration of evidence, being the evidence of an accomplice, reliable. *Chuan Suba v State of Sikkim*, 2013 Cr LJ 2135 (Sik), allegation of possession of machinery to print fake notes. Conviction was held improper since the disclosure statement was not voluntary.
123. *Narayan Maruti Waghmode v State of Maharashtra*, 2011 Cr LJ 3318 (Bom); *Md Amir Hussain v State of Assam*, 2010 Cr LJ. 4201 [Gau]. See also *Roney Dubey v State of WB*, 2007 Cr LJ 4577 (Cal); *Jayeshkumar Panchal v State*, 2007 Cr LJ 2254 (Guj); *Golo Mandla Ram Rao v State of Jharkhand*, 2004 Cr LJ 1738 (Jha).

## THE INDIAN PENAL CODE

### CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

#### Of Currency-Notes and Bank-Notes

**[s 489B] Using as genuine, forged or counterfeit currency-notes or bank-notes.**

**[Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counter-feit currency-note or bank-note, knowing or having reason to believe the same to be forged or counter-feit, shall be punished with <sup>124</sup>[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.]**

#### COMMENT.—

This section resembles sections 239, 241 and 258. It provides against trafficking in forged or counterfeit notes. The section deals with the use of counterfeited currency-notes.<sup>125</sup>

An offence under section 489-B has the following essential ingredients:—

- (i) selling, buying or receiving from any person or otherwise trafficking currency-note or banknote;
- (ii) any forged or counterfeit currency-note or bank-note;
- (iii) knowing (or having reason to believe) that such note was forged or counterfeit.

To bring home an offence under [section 498-B, IPC, 1860](#): (a) the prosecution is to prove that the relevant currency-note or banknote was forged or counterfeit; (b) that the accused sold to or received from, some person, or trafficked in, or used as genuine the aforesaid currency-note or banknote; (c) that when the accused did so he had knowledge or reason to believe about its being forged or counterfeit. In order to sustain the conviction of an accused, the prosecution has not only to prove that he had the possession of counterfeit note, having reason to believe it as such, but also to prove circumstances which lead clearly, indubitably and irresistibly to his intention to use/circulate the notes in the public. Such intention can be proved by a collateral circumstance that he had palmed off such notes before, or that he was in possession of such notes in such large a number, that his possession for any other purpose was inexplicable.<sup>126</sup> Merely because the petitioner had been found to be in possession of the counterfeit notes of similar denomination of the same series and numbers closer to the numbers of the notes detected by the bank, it would be difficult to accept that the notes have been used or circulated by the applicant.<sup>127</sup> Mere possession does not necessarily indicate that there was mal-intention or intention to use. Intention to use the counterfeit currency-notes, being an essential ingredient of the offence under [sections 489B and 489C of IPC](#), prosecution is, no doubt, saddled with the liability to establish such intention or attempt on the part of the appellant/accused to use such counterfeit notes. On careful scrutiny of the evidence on record there was no evidence,



whatsoever, which suggests that the appellant had made any effort to use the counterfeit currency-notes. Since evidence on that issue is lacking manifestly, hence, the conviction of the appellant under [section 489B of IPC](#) cannot be sustained.<sup>128.</sup>

#### **[s 489B.1] Burden of proof.—**

Under [section 489B of IPC, 1860](#), the burden is on the prosecution to prove that at the time when the accused was passing the counterfeit notes, he knew that they were forged one and the mere possession of such notes by him does not shift the burden of the accused to prove his innocent possession of such notes. The knowledge or reason to believe that the note was forged has to be proved to fix the liability under [sections 489B and 489C of IPC](#). In the case of *Golo Mandla Ram Rao v State of Jharkhand*,<sup>129.</sup> the counterfeit currency-notes and incriminating articles were recovered from the possession of the accused and only the counterfeit coins from the possession of the co-accused.

#### **[s 489B.2] Information regarding the involvement of the accused admissible.—**

Where on the basis of information regarding the source of counterfeit currency notes accused, who supplied it and subsequently all the others involved in the racket were arrested, though there were no recovery of notes from the intermediaries, the information was held admissible as the police were not aware of the other accused, who were involved in the offence.<sup>130.</sup>

<sup>124.</sup> Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

<sup>125.</sup> *K Hashim v State of TN*, [2005 Cr LJ 143](#) : [AIR 2005 SC 128](#) [[LNIND 2004 SC 1142](#)] : (2005) 1 SCC 237 [[LNIND 2004 SC 1142](#)] .

<sup>126.</sup> *Kiran Kumar K Khanda v State of Maharashtra*, [2011 Cr LJ 2748](#) (Bom).

<sup>127.</sup> *Aditya Yadav v State*, [2013 Cr LJ 3352](#) (Bom).

<sup>128.</sup> *Ashu Mondal v State of WB*, [2013 Cr LJ 715](#) (Cal); *Tej Pratap Singh v State*, [2012 Cr LJ 486](#) (Del).

<sup>129.</sup> *Golo Mandla Ram Rao v State of Jharkhand*, [2004 Cr LJ 1738](#) : 2004 AIR Jhar HCR 453.

<sup>130.</sup> *Mehboob Ali v State of Rajasthan*, [2015 \(4\) Crimes 357](#) (SC) : (2016) 14 SCC 640 [[LNIND 2015 SC 630](#)] .

## THE INDIAN PENAL CODE

### CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

#### Of Currency-Notes and Bank-Notes

**[s 489C] Possession of forged or counterfeit currency-notes or bank-notes.**

**[Whoever has in his possession any forged or counterfeit currency-note or banknote, 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.]**

#### COMMENT.—

The ingredients which are required to constitute an offence under section 489C are as follows:

- (1) The note in question is a currency-note or bank-note;
- (2) Such note was forged or counterfeited;
- (3) The accused was in possession of the currency-note or bank-note;
- (4) The accused intended to use the same as genuine;
- (5) The accused knew or had reason to believe the note to be forged.<sup>131.</sup>

This section resembles sections 242, 243 and 257. It deals with possession of a forged or counterfeit currency-note or banknote. The mere possession of a forged note is not an offence. It is not only necessary to prove that the accused was in possession of the forged note; but it should be further established that (1) at the time of this possession he knew the note to be forged or had reason to believe it to be so, and (2) he intended to use it as genuine. 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.<sup>132.</sup> Possession and knowledge that the currency-notes in question were counterfeit are both necessary. The section is not confined to Indian currency-notes alone.<sup>133.</sup> Possession of a large number of counterfeit currency-notes may itself justify drawing up of a presumption that the intention of the accused was to use them as genuine or that they may be used as genuine within the meaning of [section 489C, IPC, 1860](#). Thus, where the accused led the searching officer to his Press premises and after digging the floor of it brought out a box containing many bundles of counterfeit currency-notes or where he produced 20 bundles of counterfeit currency-notes from his sachet, it was held an offence under [section 489C, IPC](#), was made out.<sup>134.</sup> This is, however, not to say that such a presumption can always be drawn from the mere fact of possession of a large bundle of counterfeit currency-notes by the accused. Thus, where the accused while trying to alter a two-rupee counterfeit note was caught and on search of his person 99 more such counterfeit notes were recovered but the accused claimed in course of his