examination that he got these notes by selling three quintals of tamarind to an unknown person and that he had no knowledge that they were counterfeit till his interrogation by the police and the notes too were not of such description that a mere look at them will convince anyone that they were counterfeit, it was held that the accused could not be convicted under sections 389B and 389C, IPC, in the absence of any evidence or circumstance showing that he had knowledge that the notes were counterfeit notes. In this case the accused was not even asked in his examination under section 342, Cr PC, 1973 (now section 313) if he knew the notes to be counterfeit.[135.]

In *Umashankar v State of Chhatisgarh*,[136.] the Supreme Court examined the facts of the case and principle involved therein as follows:[137.]

A perusal of the provisions, shows that *mens rea* of offences under Section 489B and 489C is, "knowing or having reasons to believe the currency-notes or bank-notes are forged or counterfeit". Without the afore-mentioned *mens rea,* selling, buying or receiving from another person or otherwise trafficking in or using as genuine forged or counterfeit currency-notes or bank-notes is not enough to constitute offence under Section 489B of IPC. So also possessing or even intending to use any forged or counterfeit currency-notes or bank-notes is not sufficient to make out a case under Section 489C in the absence of *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 [some prosecution witnesses] that they were able to make out that currency note alleged to have been given to [one of them] was fake "presumed" such a *mens rea.* On the date of the incident, the appellant was said to be 18 years 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 489B and 489C are not proved. We, therefore, set aside the conviction and sentence passed on the appellant under Sections 489B and 489C of IPC and acquit him of the said charges.[138.]

[s 489C.1] Burden of proof.—

In order to uphold conviction under section 489C of IPC, 1860, intention to use counterfeit currency-notes as genuine, is also to be proved beyond reasonable doubt. Since the burden lies on the prosecution to prove the possession, knowledge and intention to use the currency-notes, it is also burden of the prosecution to establish the circumstances which lead clearly and irresistibly to the inference that the accused had intention to pass the currency-notes to the public. When a large number of counterfeit notes are recovered from the accused, in absence of any reasonable explanation tendered by the accused, this case must give rise to the presumption that possession of such notes was for trafficking in currency-notes. That presumption, no doubt, is a presumption of fact, which can be drawn from the circumstances of the case. The fact that the accused was found in possession of a large number of notes gives rise to inference that it might be used as genuine.[139.]

131. *Panna Lal Gupta v State of Sikkim,* 2010 Cr LJ 825 (Sik); See also *Karunakaran Nadar v State of Kerala,* 2000 Cr LJ 3748 (Ker).

132. *Bur Singh,* (1930) 11 Lah 555. *Md Amir Hussain v State of Assam,* 2010 Cr LJ 4201 [Gau].

133. *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] .

134. *State of Karnataka v KS Ramdas,* 1976 Cr LJ 228 (Kant). See also *Ashu Mondal v State of WB,* 2013 Cr LJ 715 (Cal), recovery of large number of counterfeit notes gives rise to presumption that possession was for trafficking in currency notes. Conviction under section 489C upheld. *Chuwan Suba v State of Sikkim,* 2013 Cr LJ 2135 (Sik), conviction was held improper since the disclosure statement is found not voluntary. *Tej Pratap Singh v State,* 2012 Cr LJ 486 (Del), difference in number of currency, held not material, conviction was held proper. *Prabhakar Narayan Patlola v State of Maharashtra,* 2011 Cr LJ 738 (Bom); *Kurukshetra Sena v State of Chhattisgarh,* 2011 Cr LJ 2493 ; *Inthiyas Ahmed v State,* 2011 Cr LJ 4802 (Kant), prosecution has not proved that the notes seized from the possession of the accused were the same notes which were subjected for examination and further that on examination they were found to be counterfeit notes. Accused acquitted.

135. *M Mammutti v State of Karnataka,* 1979 Cr LJ 1383 (SC). **Followed** in *Mohan Lal Sarma v State of WP*, 1990 Cr LJ 215 (Cal), where the court added that mere possession does not shift the burden to the accused. The prosecution has to prove the presence of the type of *mens rea* required by these sections. *Vijayan v State of Kerala,* 2002 Cr LJ 187 (Ker), the informant stated that even at first blush he was convinced that the notes in the possession of the accused were counterfeit as there was difference in colour. The accused held liable under the section. *Abdul Majeed v State of Maharashtra,* 2002 Cr LJ 720 (Bom), the notes in question did not carry any sign of being counterfeit, the accused was an ordinary person, mere possession by him did not create a presumption of guilty knowledge. *Mohammed Yasin v State of UP,* 1997 Cr LJ 3188 (All), a note of which two parts were pasted together was presented to a shopkeeper. He suspected genuineness and consulted another shopkeeper for guidance. Counterfeiting was so tactful that the accused could not detect it. He did not run away. He remained at the shop till police arrived. He had no other note. Ingredients of the offence not made out.

136. *Umashankar v State of Chhatisgarh*, AIR 2001 SC 3074 [LNIND 2001 SC 2237] : 2001 Cr LJ 4696 .

137. *Ibid* at p 3075.

138. Citing *M Mammutti v State of Karnataka,* AIR 1979 SC 1705 [LNIND 1979 SC 125] : 1979 Cr LJ 1383 .

139. *Ashu Mondal v State of WB,* 2013 Cr LJ 715 (Cal).

THE INDIAN PENAL CODE

CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

Of Currency-Notes and Bank-Notes

[s 489D] Making or possessing instruments or materials for forging or counterfeiting currency-notes or bank-notes.

[Whoever makes, or performs, any part of the process of making, or buys or sells or disposes of, or has in his possession, any machinery, instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for forging or counterfeiting any currency-note or bank-note, shall be punished with [140].[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 is analogous to sections 233, 234, 256, 257 and 485.

Where there is no evidence to show that the printing machine found on the land of the accused had any connection with the printing of the counterfeit notes found in the possession of the accused, he could not be held guilty under section 489, IPC, 1860.[141] It is not necessary that the machinery for counterfeiting found in possession of the accused should be the whole set required for counterfeiting.[142]

---

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

141. *State of Karnataka v Ramdas, Supra*.

142. *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 INDIAN PENAL CODE

CHAPTER XVIII OF OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

Of Currency-Notes and Bank-Notes

[s 489E] Making or using documents resembling currency-notes or bank-notes.

(1) [Whoever makes, or causes to be made, or uses for any purpose whatsoever, or delivers to any person, any document purporting to be, or in any way resembling, or so nearly resembling as to be calculated to deceive, any currency-note or bank-note shall be punished with fine which may extend to one hundred rupees.

(2) If any person, whose name appears on a document the making of which is an offence under sub-section (1), refuses, without lawful excuse, to disclose to a police-officer on being so required the name and address of the person by whom it was printed or otherwise made, he shall be punished with fine which may extend to two hundred rupees.

(3) Where the name of any person appears on any document in respect of which any person is charged with an offence under sub-section (1) or on any other document used or distributed in connection with that document it may, until the contrary is proved, be presumed that person caused the document to be made.]

COMMENT.—

This section was introduced by Act VI of 1943 because photo prints and other reproductions of currency-notes and banknotes, though printed for innocent purposes, had passed into circulation in a number of cases and it was considered undesirable that in a country like India with a large mass of illiterate and ignorant persons such reproductions should be permitted to go unchecked before they menaced the safety of the currency.

While the counterfeiting of any currency-note or banknote constituted a criminal offence under section 489A read with section 28, there was no legal provision prohibiting the reproduction, or the production of imitations, of currency-notes and banknotes for such purposes as advertisement and the like where there was no intention to practise deception on any one, nor even a knowledge that deception was likely to be practised with the help of imitations.[143.] There is no material on the record to show that the xerox machine, the voltage stabiliser, the blank papers and the paper containing some impression of the Indian currency-note belonged to the convict. Mere fact that they were seized is not enough. Therefore, the question of the convict becoming liable for possession of the aforesaid articles does not arise.[144.]

143. *Statement of Objects and Reasons, Gaz of India*, 1943, Part V, p 56, dated 10 February 1943.

144. *Roney Dubey v State of WB*, 2007 Cr LJ 4577 (Cal).

THE INDIAN PENAL CODE

CHAPTER XIX OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE

The authors of the Code observe:

We agree with the great body of Jurists in thinking that in general a mere breach of contract ought not to be an offence but only to be the subject of a civil action.

To this general rule there are, however, some exceptions. Some breaches of contract are very likely to cause evil such as no damages or only very high damages can repair, and are also very likely to be committed by persons from whom it is exceedingly improbable that any damages can be obtained. Such breaches of contract are, we conceive, proper subjects for penal Legislation.[1.]

[s 490] *[Repealed]*

[2.][* * *].

1. The Works of Lord Macaulay - Note P.
2. Omitted by Act 3 of 1925.

THE INDIAN PENAL CODE

CHAPTER XIX OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE

The authors of the Code observe:

We agree with the great body of Jurists in thinking that in general a mere breach of contract ought not to be an offence but only to be the subject of a civil action.

To this general rule there are, however, some exceptions. Some breaches of contract are very likely to cause evil such as no damages or only very high damages can repair, and are also very likely to be committed by persons from whom it is exceedingly improbable that any damages can be obtained. Such breaches of contract are, we conceive, proper subjects for penal Legislation.[1.]

[s 491] Breach of contract to attend on and supply wants of helpless person.

Whoever, being bound by a lawful contract to attend on or to supply the wants of any person who, by reason of youth, or of unsoundness of mind, or of a disease or bodily weakness, is helpless or incapable of providing for his own safety or of supplying his own wants, voluntarily omits so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

COMMENT.—

Object.—The authors of the Code say:

> We also think that persons who contract to take care of infants of the sick and of the helpless, lay themselves under an obligation of a very peculiar kind, and may with propriety be punished if they omit to discharge their duty. The misery and distress which their neglect may cause is such as the largest pecuniary payment would not repair; they generally come from the lower ranks of life, and would be unable to pay anything. We, therefore, propose to add to this class of contracts the sanction of the penal law.[3.]

[s 491.1] Ingredients.—This section requires:—

1. Binding of a person by a lawful contract.
2. Such contract must be to attend on or to supply the wants of a person who is helpless or incapable of providing for his own safety or of supplying his own wants by reason of
   - (i) youth; or
   - (ii) unsoundness of mind; or
   - (iii) disease; or
   - (iv) bodily weakness.
3. Voluntary omission to perform the contract by the person bound by it.

Under this section it is not the breach of contract towards the other party to the contract that is to be regarded, but the breach of the legal obligation towards the

incapable person, which had been accepted and transferred by the contract.

[s 491.2] Ordinary servants do not come within this section.—

The accused, a cook, on a morning whilst the complainant's wife was ill and unable to supply her wants, left his service without warning or permission. It was alleged that the illness of the complainant's wife was aggravated thereby. It was held that the accused was engaged only as an ordinary cook to a family, and was not bound to attend on, or to supply the wants of, any helpless person, and that, therefore, this section did not apply.[4.]

---

1. The Works of Lord Macaulay - Note P.
3. The Works of Lord Macaulay - Note P.
4. *Vithu*, (1892) (Unrep) CrC 608.

THE INDIAN PENAL CODE

CHAPTER XIX OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE

The authors of the Code observe:

We agree with the great body of Jurists in thinking that in general a mere breach of contract ought not to be an offence but only to be the subject of a civil action.

To this general rule there are, however, some exceptions. Some breaches of contract are very likely to cause evil such as no damages or only very high damages can repair, and are also very likely to be committed by persons from whom it is exceedingly improbable that any damages can be obtained. Such breaches of contract are, we conceive, proper subjects for penal Legislation.[1.]

[s 492] *[Repealed]*

[5.][* * *].

1. The Works of Lord Macaulay - Note P.
5. Omitted by Act 3 of 1925.

THE INDIAN PENAL CODE

CHAPTER XX OF OFFENCES RELATING TO MARRIAGE

[s 493] Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.

Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

COMMENT.—

Upon perusal of section 493 of the IPC, 1860 to establish that a person has committed an offence under the said section, it must be established that a person had deceitfully induced a belief to a woman, who is not lawfully married to him, that she is a lawfully married wife of that person and thereupon she should cohabit or should have had sexual intercourse with that person. Looking at the afore-stated section, it is clear that the accused must induce a woman, who is not lawfully married to him, to believe that he is married to her and as a result of the afore-stated representation, the woman should believe that she was lawfully married to him and there should be cohabitation or sexual intercourse as a result of the deception. The essence of an offence under section 493 IPC, 1860 is, therefore, practice of deception by a man on a woman as a consequence of which the woman is led to believe that she is lawfully married to him although she is not and then make her cohabit with him.[1.] The offence under this section may also be punished as rape under section 375, clause (4).[2.]

[s 493.1] Ingredients.—

The section contains two ingredients:—

(1) Deceit causing a false belief in the existence of a lawful marriage.

(2) Cohabitation or sexual intercourse with the person causing such belief.

[s 493.2] Proof of marriage.—

Section 493 IPC, 1860 do not presuppose a marriage between the accused and the victim necessarily by following a ritual or marriage by customary ceremony. What has been clearly laid down and emphasised is that there should be an inducement of belief in the woman that she is lawfully married to the accused/ appellant and the inducement of belief of a lawful marriage cannot be interpreted so as to mean or infer that the marriage necessarily had to be in accordance with any custom or ritual or under the Special Marriage Act, 1954. If the evidence on record indicate inducement of a belief in any manner in the woman which cannot possibly be enlisted but from which it can reasonably be inferred by ordinary prudence that she is a lawfully married wife of the man accused of an offence under section 493 IPC, 1860 the same will have to be treated as sufficient material to bring home the guilt under section 493 IPC, 1860.