

Case No. EKD 0117/01/10

July 17, 2010

Yerevan, Republic of Armenia

VERDICT
IN THE NAME OF THE REPUBLIC OF ARMENIA

COMMON JURISDICTION COURT IN KENTRON AND NORK-MARASH
ADMINISTRATIVE REGIONS OF YEREVAN

Presided by: Judge, Armen Khachatryan
Assisted by: Parandzem Babayan
Participated by: Prosecutor, Grigor Tigranyan
Counsel, Siranush Harutyunyan
Representative of the victim, Zohrak Rafaelov
Interpreter, Kristine Khemchyan

An open-court hearing of the criminal case on charges against:

Hitesh Saraogi: born on March 31, 1987 in Republic of India; Indian by nationality; citizen of the Republic of India; studies in his fourth year at the Yerevan State Medical University; single; with no employment history; with no dependent persons under his care; with no previous convictions; registered at D-40 Vivec-Vihar Str., Deli, Republic of India; residing at Room No. 424, Zeitun Dorm No. 5, Yerevan, Republic of Armenia; charges are pressed pursuant to Clause 2, Part 2, Article 203, Clause 1, Part 2, Article 34-178, and Clause 2, Part 2, Article 34-190 of the Criminal Code of the Republic of Armenia; provisional measure imposed in the form of a written undertaking not to leave.

The criminal case No. 58202010 was instigated on March 2, 2010, by the Department of Investigations of the National Security Service of the Republic of Armenia, pursuant to Clause 2, Part 2, Article 203, Clause 1, Part 2, Article 34-178, and Clause 2, Part 2, Article 34-190 of the Criminal Code of the Republic of Armenia. On April 7, 2010, Hitesh Saraogi was identified as an accused, pursuant to Clause 2, Part 2, Article 203, Clause 1, Part 2, Article 34-178, and Clause 2, Part 2, Article 34-190 of the Criminal Code of the Republic of Armenia, for the following actions: "Being a fourth-year student at the Yerevan State Medial University, Hitesh Saraogi, with an intention of finding a job, sent an email to "British Council" and received an email in November of 2009, sent by a doctor, Lee Hartwell (email address: fhere.leehartwell@hotmail.com), proposing a deal to earn money by cashing out "American Express" travelers' checks in one of Armenian banks and sending 90% of the proceeds to David Spree in London,

the United Kingdom of Great Britain, while keeping the remaining 10% of the proceeds as profit. After reaching an agreement by email on committing theft from Armenian banks by means of using counterfeit travelers' checks, and sending 90% of the illicit proceeds to the United Kingdom of Great Britain, a batch of four "American Express" blank travelers' checks were sent to the Republic of Armenia on the name of Hitesh Saraogi, and an email was received with instructions on filling out the checks, presenting them to the bank, and cashing them out. After filling out the four "Armenian Express" travelers' checks (in equivalence of 500 U.S. dollars each) with his own information, Hitesh Saraogi presented the checks to the headquarters of "Converse Bank" CJSC on February 1, 2010, in order to cash them out for 2,000 U.S. dollars (in equivalence of 752,100 Armenian drams); however, the employees of the bank disclosed the fraud and informed the law enforcement authorities about this incidence, and the crime was prevented, for reasons beyond the control of Hitesh Saraogi".

The criminal case No. 58202010 with an indictment was filed to the examination of the Court on May 17, 2010.

The accused, Hitesh Saraogi, pleaded guilty in the charges pressed against him, pursuant to Clause 2, Part 2, Article 203, Clause 1, Part 2, Article 34-178, and Clause 2, Part 2, Article 34-190 of the Criminal Code of the Republic of Armenia, and gave testimony that he studied at Yerevan State Medical University. For the last two years, his living conditions were not very well, and, thus, he decided to find a job through the internet. Looking for a job, he posted several announcements on different job-offering websites, and sent an email to "British Council". After a while, he received an email from an unknown doctor, Lee Hartwell, who was trying to find out whether he was interested in finding a job. He confirmed his interest in finding a job and sent him his personal information and residential address. Afterwards, he received another email from the doctor, saying that blank travelers' checks were sent out to him, which he would need to cash out in a bank for 2,000 U.S. dollars, and send 90% of the proceeds to David Spree in the United Kingdom of Great Britain, while keeping the remaining 10% of the proceeds as profit. In the letter, the doctor included detailed instructions on the required steps and on what and where to write on the checks, while saying that they were helping children with cancer in the United Kingdom of Great Britain. The doctor said that the checks were donated to their organizations by philanthropists. He searched for information on Lee Hartwell in the internet and after finding out that the doctor was a famous scientist and a laureate of a Noble Prize, he had no suspicions. In January of 2010, the watchman in the dorm gave him a sealed envelope, where he found four blank travelers' checks (in equivalence of 500 U.S. dollars each). Upon the instruction of the doctor, he filled out the checks and presented them to the bank on February 1, 2010 in order to cash them out; however, he was told in the bank that he had presented counterfeit checks, which were eventually seized by the bank. After this incidence he did not keep contact with the doctor.

The representative of the victim, Zohrak Rafaelov, gave testimony that he worked at "Converse Bank" CJSC as head of financial monitoring and supervision department. On February 1, 2010, in the period from 12:00 to 13:00 o'clock, he was called at his desk and told that a young Indian national had approached the clerk of the customers' service office, Arpine Mnatsakanyan, and expressed his interest in cashing out the

“American Express” counterfeit checks. A committee was formed in the bank and the records of disclosing counterfeit checks were documented; afterwards, the checks were seized, packaged and sealed. The accused, Hitesh Saraogi, was the one presenting the counterfeit checks, who explained that a doctor from England had sent him the checks and asked him to cash them out and send the proceeds to him. A few days after, the seized checks were sent to the National Security Service of the Republic of Armenia.

The witness, Arpine Mnatsakanyan, gave testimony that she worked as a cashier at “Converse Bank” CJSC. In performing her duties on February 1, 2010, the accused, Hitesh Saraogi, approached and gave her four “American Express” travelers’ checks (in equivalence of 500 U.S. dollars each) to cash out. At first, the checks seemed suspicious to her, and she started to examine them closer. The colors on the checks were blurred, the paper was cheap and did not conform to the quality of real checks’ paper, and the lines on the checks’ facets were not accurate. At that point, she contacted a special unit in Moscow, Russian Federation, which was responsible for confirming authenticity of travelers’ checks. After the phone conversation, she was sure that no real checks were issued with the numbers written on the checks presented to her, and, thus, she was dealing with counterfeit checks. She reported the incidence to her immediate supervisor, and the accused, Hitesh Saraogi, was invited to the security unit, where a corresponding committee was formed, and the checks were seized. It took approximately 15 minutes to test the authenticity of the checks; during this time, Hitesh Saraogi waited for her and asked why the transaction took that long.

According to the conclusion No. 05771001 of the documentary expert examination, “American Express” travelers’ checks with serial numbers RH646-898-258, RH646-898-259, RH646-898-243, and RH646-898-265 did not conform to the state standards of issuance in the U.S.A. and were produced by means of lithographic printing.

According to the corresponding decision, “American Express” travelers’ checks with serial numbers RH646-898-258, RH646-898-259, RH646-898-243, and RH646-898-265 were identified as material evidence.

In analyzing the charges pressed against the accused, Hitesh Saraogi, and the evidence obtained within the criminal case, the Court establishes that Hitesh Saraogi shall be acquitted of the charges pressed pursuant to Clause 2, Part 2, Article 203 and Clause 2, Part 2, Article 34-190 of the Criminal Code of the Republic of Armenia, for the following reasons:

According to Article 3 of the Criminal Code of the Republic of Armenia, the only base for criminal liability is the committal of an action, which includes all the elements of crime specified in the criminal law.

According to Article 18 of the Criminal Code of the Republic of Armenia, a crime is an intentional action with social ramifications, as specified in the criminal law. That is, criminal liability shall be based on specific criminal actions, and not on the anti-social characteristics, ideas, or opinions of the person, and a person can be subject of criminal liability only if his/her intentions and ideas are reflected and materialized into a specific action.

According to Clause 2, Part 2, Article 190 of the Criminal Code of the Republic of Armenia, the conversion or transfer of property, committed with a prior agreement between a group of people, knowing that such property is proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his actions; or the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property is proceeds of crime; or the acquisition, possession, use or disposition of property, knowing, at the time of receipt, that such property was proceeds of crime, is punishable.

The analysis of the offence, specified under Clause 2, Part 2, Article 190 of the Criminal Code of the Republic of Armenia, indicates that one of the mandatory elements for the crime specified under the foregoing Article is the object of crime – illicit proceeds. In order to establish the elements of the crime, specified under Clause 2, Part 2, Article 34-190 of the Criminal Code of the Republic of Armenia, in the actions of Hitesh Saraogi, it is necessary to also have all the elements of the object of crime established in the actions of Hitesh Saraogi. In this case, the actions of Hitesh Saraogi do not include the object of crime (illicit proceeds), considered a mandatory element of the crime, specified under Clause 2, Part 2, Article 190 of the Criminal Code of the Republic of Armenia; in the absence of the foregoing, the actions of Hitesh Saraogi do not include the elements of crime, specified under Clause 2, Part 2, Article 34-190 of the Criminal Code of the Republic of Armenia. The circumstance mentioned by the accused, Hitesh Saraogi, that he was going to send the illicit proceeds via a bank transfer to David Spree, was only his intention, the disclosure of which can neither be considered a preparation nor an attempt for a crime. That is, the disclosure of the intention of the accused is not a phase of a crime.

According to Clause 2, Part 2, Article 203 of the Criminal Code of the Republic of Armenia, the creation for sale or the sale, by a group with prior agreement, of counterfeit payment documents or documents not considered currency or security, but serving as evidence of, establishing or granting property rights, is punished.

The analysis of the crime, specified under Clause 2, Part 2, Article 203 of the Criminal Code of the Republic of Armenia, indicates that the subjective side of this crime is characterized by intention. A mandatory element of the subjective side in creating counterfeit payment documents is the intention to sell them. In case there is no intention of sale in creating these documents, the person cannot be subject of criminal liability for either creating counterfeit payment documents or for selling them. In case payment documents are forged with an intention of gaining illicit possession over a third party's property (and not with an intention of sale), the actions shall be classified as preparation for fraud; and in case counterfeit payment documents are furtively used to gain possession over a third party's property, but the plan is not realized for uncontrollable reasons, the actions shall be classified as attempt of fraud. In this case, after forging the payment documents, Hitesh Saraogi had no intention of selling and did not sell the checks, but he had an intention to furtively use the counterfeit payment documents in order to gain illicit possession over the property (a large amount of 2,000 U.S. dollars, in equivalence of 752,000 Armenian drams) of "Converse Bank" CJSC; however, the crime was not completed for

reasons beyond his control, since it was disclosed by the employees of the bank. Therefore, the actions of the accused, Hitesh Saraogi, do not include the elements of crime, specified under Clause 2, Part 2, Article 203 of the Criminal Code of the Republic of Armenia.

According to Part 2, Article 366 of the Criminal Code of the Republic of Armenia, in case there are no elements of crime, the Court must issue an acquittal, while according to Part 1 of the foregoing Article, the Court shall acquit the accused of the charges pressed by the indictment, which in this case are Clause 2, Part 2, Article 203 and Clause 2, Part 2, Article 190 of the Criminal Code of the Republic of Armenia.

Thus, in analyzing and assessing in conjunction all the evidence examined in the course of the judicial proceeding, the Court establishes that the evidences obtained are sufficient, and that (based on factual circumstances of the case) after receiving four "American Express" blank checks (in equivalence of 500 U.S. dollars each) by post on January 26, 2010, the accused, Hitesh Saraogi, wrote his personal information on the checks with an intention of thieving third party's property and presented the checks to the headquarters of "Converse Bank" CJSC on February 1, 2010 in order to gain possession over the 2,000 U.S. dollars (in equivalence of 752,100 Armenian drams) of the bank; however the crime was not completed for reasons beyond his control, since it was disclosed by the employees of the bank. That is, the accused, Hitesh Saraogi, committed a criminal action with elements specified under Clause 1, Part 2, Article 34-178 of the Criminal Code of the Republic of Armenia, and he shall be subject of criminal liability, pursuant to the foregoing Article.

In drawing such a conclusion, the Court takes into consideration the testimonies given by the accused, the representative of the victim, and the witness, as well as the material evidences, since these are clear, objective, and truthful, corresponding to the factual circumstances established by the Court and conforming in conjunction to other evidences. The Court establishes that the evidences, proving the charges pressed against the accused, Hitesh Saraogi, were obtained in compliance with the requirements under the Criminal Procedure Code of the Republic of Armenia, and that the evidences are sufficient for the rightful resolution of the case.

In determining the punishment for the accused, Hitesh Saraogi, the Court takes into consideration the character of the offense, the severity of social ramifications, and his personal characteristics, including the fact that he is a young student, is characterized positively, and has no prior convictions and charges.

As a factor mitigating the liability and punishment for the accused, Hitesh Saraogi, the Court takes into consideration the fact that he has committed his first crime under involuntary circumstances, pleaded guilty, and assisted the disclosure of the crime with his confession.

There are no factors aggravating the liability and punishment for the accused, Hitesh Saraogi.

The Court establishes that Hitesh Saraogi shall be punished for his actions, while taking into consideration his personal characteristics, responsibility, the factors mitigating the punishment, and the absence of factors aggravating the punishment, the Court concludes that the correction of the accused is possible with a conditional

refraining from the imposition of the punishment, but in supervision over the behavior of the latter.

The Court establishes that the provisional measure imposed on Hitesh Saraogi shall be removed after the Verdict has entered into force.

In discussing the question of material evidences, the Court establishes that the four “American Express” counterfeit checks, identified as material evidence, shall be kept with the criminal case after the Verdict has entered into force.

Based on the foregoing and guided by Article 70 of the Criminal Code of the Republic of Armenia, Part 1, Article 35, Articles 119, 357-360, 365, 366, 369-372, and 374 of the Criminal Procedure Code of the Republic of Armenia, the Court:

DECIDES

To acquit the accused, Hitesh Saraogi, of the charges pressed pursuant to Clause 2, Part 2, Article 203 and Clause 2, Part 2, Article 34-190 of the Criminal Code of the Republic of Armenia.

To declare the accused, Hitesh Saraogi, guilty pursuant to Clause 1, Part 2, Article 34-178 of the Criminal Code of the Republic of Armenia and to sentence him to imprisonment for a term of 3 (three) years.

To refrain from imposing the punishment applied pursuant to Article 70 of the Criminal Code of the Republic of Armenia, with a probation period of 3 (three) years.

To remove the provision measure, imposed on Hitesh Saraogi, in the form of a written undertaking not to leave, after the Verdict has entered into force.

To assign the supervisory function over the behavior of Hitesh Saraogi to the division of alternative punishments (in the area of Hitesh Saraogi’s residence) of the penitentiary department of the Ministry of Justice of the Republic of Armenia, while the beginning of the term shall be the day of his registration at the division of alternative punishments of the penitentiary department.

To keep the four “American Express” counterfeit checks, identified as material evidence, with the criminal case after the Verdict has entered into force.

This Verdict may be appealed to the Criminal Court of Appeals of the Republic of Armenia within a month from its official publication.

JUDGE, A. KHACHATRYAN