



Crl.A.Nos.436, 458 & 476 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.03.2023

Pronounced on : 24.03.2023

CORAM

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Criminal Appeal Nos.436, 458 & 476 of 2020

V.Parthasarathy ... Appellant/Accused 3 in CA.No.436/2020

Paul Prabakar ... Appellant/Accused 2 in CA.No.458/2020

Abdul Khader ... Appellant/Accused 1 in CA.No.476/2020

/versus/

State of Tamil Nadu rep. by
The Inspector of Police,
Counterfeit Currency Wing,
Crime Branch Central Investigation Department,
Chennai-2.

[Crime No.214/2002] ... Respondent / Complainant in Crl.Appeals

Common Prayer:- Criminal Appeals are filed under Section 374 (2) of Cr.P.C.,
praying to set aside the judgment in S.C.No.306 of 2008 dated 15.10.2020 passed
by the II Additional Sessions Court, Chennai and allow the Criminal Appeal.

For Appellant : Mr.R.Rajarithnam, Senior Counsel
For Mr.A.Ashwin Kumar [Crl.A.No.436/2020]

For Appellant : Mr.Anandharaj [Crl.A.No.458/2020]



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For Appellant : Mr.T.Shanmuga Boopathy [Crl.A.No.476/2020]

For Respondent : Mr.R.Kishore Kumar
Government Advocate (Crl.Side)

COMMON JUDGMENT

These three Criminal Appeals arise from the judgment of the II Additional Sessions Judge, Chennai on 15.10.2020 in S.C.No.306 of 2008. The 3 accused in the said case are the appellants herein.

2 The case of the prosecution, which was held proved by the Trial Court is that, on PW.1, the Sub Inspector of Police attached to Sevenwells Police Station, while on rounds, on 06.04.2002 at about 14.30 hrs received a secret information that at Door No.53, Saint Xavier Street one Abdul Kadar (First accused/ Appellant in Crl.A.No.476/2020) is in possession of fake 500 rupees currency. On receipt of this information, he intimated the same to his Superior Officer, the Inspector of Police (PW.7) by way of a special report (Ex.P1). Thereafter PW.7 and PW.1 proceeded to the said address at about 3.00 pm. On interrogating Abdul Kadar (A1), he gave a statement confessing the possession of fake currency and produced fake currency from a dark blue colour hand bag. Two



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bundles of Rs.500/- and one bundle of R.100/- denomination notes were recovered from Abdul Khadar under mahazar Ex.P13 in the presence of independent witness Vadivel (PW.2) and Palani (not examined). Abdul Khadar in his confession disclosed that he received the fake currency from one Parthasarathy (A3/Appellant in Crl.A.No. 476/2020) and Paul Prabakar(A-2/Appellant in Crl.A.No.458/2020) having office at No: 94, Broadway, Chennai, then the team headed to the said address along with A1 and independent witnesses. They reached the said address at 16.10 hrs. On being identified by A1, PW.7 arrested A2 and A3. Based on their confession statements 16 bundles of Rs.500/- fake currency, the computer and the accessories used for manufacturing fake currency of Rs.500/- and Rs.100/- denominations and 12 bundles of black colour papers in the size of Rs.500/- and Rs.100/- were recovered from A-3. From Paul Prabakar (A2) one bundle of Rs.500/- fake currency and one bundle of Rs.100/- fake currency meant for circulation recovered. Mahazar Ex.P16 in the presence of the independent witnesses Vadivel (PW.2) and Palani (not examined) prepared and incriminating materials were seized. Then the team returned to the Police Station at 18.00 hrs along with the arrested accused A1 to A3 and the materials seized. Thereafter, the First Information Report Ex.P11 in Crime No 214 of 2002 was



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registered against the accused at 18.00 hrs for offences under Sections 489 A, 489 B, 489 C, 489 D and 120 B IPC by PW.7. The accused A1 to A3 were produced before the Metropolitan Magistrate and remanded to Judicial Custody. The Material Objects recovered during the search were forwarded to the Court under Form 91. Prior to that, the doubtful currencies were sent to RBI, Chennai for verification and opinion obtained from the Treasury officer, RBI.

3 Subsequently, the investigation was transferred to CB CID Wing and thereafter. Random samples from the seized currency were sent to test at Nazik currency press by PW.8 Chandramohan Inspector of Police CBCID. The opinion of the expert PW-5 is Ex P-9. On receipt of the opinion, the final report was filed on 30.09.2005 by PW-10 Thenarasu Inspector of Police, CBCID. The accused were tried for charges under Section 489 A, 489 C, 489 D of I.P.C.

4 Before the trial court, the prosecution examined 10 witnesses. Marked 24 exhibits and 21 material objects. The Trial Court held the charges proved. The accused were sentenced as below:-



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A – 1: Abdul Kadar:

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Section 489 A IPC	3 years RI. Fine Rs 5000/- in default 6 months SI.
Section 489 C IPC	3 years RI. Fine Rs 5000/- in default 6 months SI.

A-2 : Paul Prabakar and A-3: Parthasarathy.

Section 489 A IPC	3 years RI. Fine Rs 5000/- in default 6 months SI.
Section 489 C IPC	3 years RI. Fine Rs 5000/- in default 6 months SI.
Section 489 D IPC	3 years RI. Fine Rs 2500/- in default 6 months SI.

The period of sentence ordered to run concurrently and the period of sentence already undergone ordered to be set off.

5 The Learned Senior counsel appearing for the appellants submitted that due grave procedural infirmity, the accused were prejudiced and therefore the judgment of the trial court has to be set aside.

6 Mr.R.Rajarathinam, the Learned Senior Counsel submitted that, according to the prosecution, the secret information about the cognizable offence



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was received by PW-1 at 2.30 p.m., on 06.04.2002. He did not proceed to the place where the informant mentioned, but he went to the Police Station and submitted his special report to PW-7, however not registered the FIR.

6 (a) After receiving the special report from PW-1, case was not registered by PW-7, but has along with PW-1 proceeded to the place mentioned by the informant and has effected seizure. The FIR came to be registered only at 18.00 hrs after completion of seizure and arrest of all the accused. No plausible explanation for registering the FIR belatedly after completion of search, seizure and arrest proceedings, inspite of the fact that the special report from PW-1 received at the Station by PW-7 at 15.00 hrs.

6 (b) According to PW-7, on receipt of the special report, he recorded it in the General Dairy, informed the Joint Commissioner (North) and proceeded to No.53, Saint Xavier Street along with the special team. The prosecution has not placed any material evidence to indicate PW-7 went to the places of search and seizure along with a special team.



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6(c) Though PW-7 has deposed that before proceeding to No.94, Broadway, he gave prior intimation about search to the VIII Metropolitan Magistrate through Head Constable 2836, neither the copy of the intimation nor Head Constable 2836 produced before the Court.

6 (d) The address No. 94, Broadway is a vague address and PW-2 Vadivel, the prosecution witness for the Mahazar Ex.P15 and Ex.P16 of search and seizure at No.53, Saint Xavier Street and No.94, Broadway denied knowledge about the case and had deposed that nothing has been seized or recovered from his presence. Hence he was treated as witness hostile to the prosecution. Another witness Palani, who signed the Recovery Mahazars examined as PW-6 and he also turned hostile and denied that the material objects in this case was recovered from the accused in his presence.

6 (e) The Inspector of Police who claims that he went to the place of A-1 at No.53, Saint Xavier Street and the place of A-2 and A-3 at No. 94, Broadway, but has not prepared any rough sketch of the place.



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6 (f) The numbers of currency and its value not mentioned in the Mahazar.

In the FIR which was registered after the completion of search, seizure and arrest mentioned that fake currency of face value of totally Rs:9.5 lakhs were seized. However, the denominations of the currency and its numbers are not mentioned in Seizure Mahazar or in the FIR or in the Form 91 which was prepared by the Police and submitted to the Court along with the Material Objects.

6 (g) The computer and its peripherals was seized from A-3 under the Search Memo Ex.P14 alleging that these computer and printer were used to manufacture fake 500 and 100 rupees currency. Whereas, the storage media of the suspected computer was subjected to forensic analysis and the Report Ex.P24 given by Mr. A.K.Singh and Mr. Krishna Sastry of Central Government Forensic Laboratory at Hyderabad indicates that, “the image relating to Rs.100/- and Rs.500/- counterfeit currency not been found in the suspected storage media. No other incriminating files, documents and images related to the case have been found in the suspected storage media.”



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7 The Learned Senior Counsel for the appellants further submitted that

for a year and half after the alleged seizure of counterfeit currency, when the Inspector of Police, CBCID Wing, Mr.Udayakumar (PW-9) in his petition to the VIII MM, Egmore, to forward the properties for expert's examination has annexed the detail of the 74 notes of 500 rupees denomination alleged to have been seized from Parthasarathi, 8 notes of 500 rupees denomination and 8 notes of 100 rupees denomination alleged to have been seized from Paul Prabakar and 23 notes of 500 rupees denomination and 16 notes of 100 rupees denomination alleged to have been seized from Abdul Kadar. This petition is dated 09.12.2003 and according to the prosecution, these are notes selected at random to send it for forensic analysis. Whereas, the Form 91 which reached the court on 26/04/2002 does not contain details about the total number of notes in each denomination and the serial number in each of the note. Even the face value of the currency seized not mentioned.

8 Therefore the Learned Senior Counsel for the appellants submitted that, the Trial Court failed to consider the failure of the prosecution to prove what was seized from the accused persons was produced before the Court and subsequently sent for forensic test. While both the witnesses to the recovery turned



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hostile and the Mahazar does not disclose the identity of the currency recovered.

The fact that the accused/appellants were in possession of counterfeit currency stand unproved. The PW-1 failed to mentioning the currency number and total number of notes seized from each of the accused. This is a pre-requisite in cases of fake currency to identity the currency alleged to have seized from the possession of the accused person such a grave failure renders the prosecution case doubtful and vitiate the trial for offences under section 489A, 489 C and 489 D IPC.

9 Heard the learned counsels and records perused.

10 The case of the prosecution is that, based on secret information, the premises of A-1, Abdul Kadar was searched on 06.04.2008. PW-1, the Sub Inspector of Police who received the secret information and PW-7, the Inspector of police who entered the information in the General Dairy and proceeded to the residence of Abdul Kadar, had deposed about the search and seizure at A-1 house at No.53, Saint Xavier Road and then the search and seizure at No.94, Broadway, where A2 and A3 were carrying on business. What is seized is mentioned in the recovery mahazars marked as Ex P-13 and Ex P-16. The seized materials were



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forwarded to the Magistrate under Form 91, and the true copy of the A Property register extract for the year 2002 and the B Property register Extract for the year 2004 indicates only the number of bundles of the currency of denomination of Rs.500/- and Rs.100/- but not the total number of notes in each denomination and sum total of the fake currency seized. This omission is very significant because there is no material to show exactly how much fake currency seized from each of these three accused and what were the serial numbers and total number of notes.

11 The omission to mention the details of the currency seized in the Mahazars renders the prosecution case doubtful, since there is no identification of the currency seized to correlate the currency sent for examination to the Treasurer, RBI at Chennai and to the India Security Press at Hyderabad. In the FIR [Ex.P1] registered by PW-7, it is mentioned that fake currency totally Rs.9,50,000/- seized from these three accused. However while deposing before the Court, PW-7 has identified the counterfeit currencies seized from A-1 at No 53, Saint Xavier Street as M.O.3 and M.O.4. They are the 2 bundles of Rs.500/- counterfeit currency containing 73 notes (corrected as 115) and 94 notes and one bundle of Rs.100/- fake currency containing 32 notes as M.O.5. He has further deposed that at No.94,



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Broadway from the possession of 3rd accused, he recovered 16 bundles of Rs.500/- fake currency which is marked as M.O.6. From A-2, he recovered one bundle of Rs.500/- counterfeit currency containing 63 notes and one bundle of Rs.100/- counterfeit currency containing 61 notes. They are marked as M.O.20 and M.O.21 respectively. There is no indication to know how many notes were there in the 16 bundles of Rs.500/- fake currency.

12 Beside the above testimony of PW-7 regarding seizure same not corroborated by the independent witnesses, who witnessed the seizure. This Court also finds material contradiction regarding the face value of the counterfeit currencies alleged to have been seized from each of the accused on 06.04.2002, there are discrepancies in the ranking and name of accused mentioned in the Annexure to the requisition Petition of the Investigating Officer filed on 09.12.2003 in the Court to forward the currency for examination by the India Security Press at Nasik. This petition filed 1½ years after the alleged seizure, for the first time mentions about the serial numbers of the notes. Documents marked as Ex P-7 indicates that soon after the seizure, prior to forwarding the currency to the Court, 1891 pieces of 500 rupees notes and 158 pieces of 500 rupees notes



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were sent to RBI at Chennai and same been examined by Mr. T.A.Balu (PW-4) the Treasurer at RBI. On examining those currencies he has opined that they are not genuine notes. After lapse of one and half years, request from Investigating Officer to the Court has emanated to forward the annexure mentioned currency notes for examination by India Security Press at Nazik. The trial court vide its letter dated 04.12.2003 marked as Ex.P8 has forwarded the currency notes for verification of its genuineness. This Court also find that Ex.P21 indicates that the Investigating Officer has requested the Magistrate to forward another set of currencies to State Forensic Lab at Mylapore for examination and based on his request vide letter dated 04.12.2003, properties in the sealed cover had been forwarded for examination by Counterfeit currency wing at SFL. On receipt of the intimation from SFL that the opinion is ready, the Learned Magistrate has authorised vide his letter dated 16.06.2004 [Ex.P22] Mr.Sasikumar Police Constable of CBCID, Counterfeit Currency Wing to collect the report. Ex.P23 letter for Assistant Director of SFL addressed to Learned VIII MM, GT indicates the opinion of SFL and the currencies sent for examination handed over to Mr.Sasikumar, Police Constable No.11326, but neither the opinion nor the notes so received after examination by SFL has not seen the light of the day.



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13 After registration of the case by the Seven hills police same has been transferred to CBCID CC wing. PW-9, the Investigating Officer has deposed that on 10.09.2003 he received the case file along with the properties from PW-7. He had deposed the case properties submitted to the Court was received back by PW-7 and from him he got it on 10.09.2003. There is no document to substantiate this statement of PW-9. He also admitted in the cross examination that till the currency sent to Lab at Nazik on 06.03.2004, it was under his custody. The chain of custody of currency notes broken and not properly explained. This gives room to suspicion of manipulation.

14 In the charge framed against the accused, this Court finds that the first accused Abdul Kadar is charged for possessing 199 notes of counterfeit 500 Rupees and 93 notes of counterfeit 100 Rupees. The second accused Paul Prabakar is charged for possessing 65 notes of counterfeit 500 Rupees. The third accused Parthasarathy is charged for possessing 1592 notes of counterfeit 500 Rupees. 12 bundles of black colour paper and computer accessories to print fake 500 Rupees and 100 Rupees currencies.



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15 In the trial to prove the charges, this Court in addition to the currencies identified by PW-7, and marked as M.O.3 to M.O.6, also find the Assistant Works Manager at India Security Press, Nasik examined as PW-5 has deposed that he received direction from the VII MM, Egmore along with requisition of the Investigating Officer and examined 112 notes of 500 rupees denomination and 41 notes of 100 rupees denomination and on examination founded it to be counterfeit currency. Those set of currencies are marked as M.O.1 and M.O.2. They are presumed to be the samples drawn from the currencies seized, but for the questions when the samples were drawn and in whose presence it was drawn after the seized currencies deposited in the Court under Form 91 and found entry on 26.04.2002 in the 'A' register maintained in the Court, the prosecution witnesses as well as documents are silent.

16 Thus, we find while the FIR dated 06.04.2002 registered after search and seizure says totally counterfeit currency face value of Rs.9,50,000/- seized from these three accused / appellants.



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17 PW-7, the Inspector, who seized the alleged counterfeit currency on 26.04.2002, has produced the currency seized before the Court under Form 91 without mentioning number of notes and its total face value.

18 In the Court while deposing he has only produced and marked fake currencies of face value less than a lakh of rupees, Marked as M.O.3 to M.O.6 and 16 bundles of Rs.500/- counterfeit currency without mentioning the total number of notes and its face value. Neither the Investigating Officer nor the Court has bothered to count the number of notes in those 16 bundles. Therefore, the total face value of the currency in that 16 bundles is left to the individual imagination.

19 This Court also not able to find from where the Trial Court while framing charge on 03.11.2008 has ascertained that the 16 bundles contain 1592 notes.

20 The FIR and the charges framed indicates two different face value of the counterfeit currency. In the trial what is produced and marked as counterfeit notes during trial is of much less than the face value mentioned in the FIR and



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charge. The cause for these discrepancy is the failure on the part of PW-7 not mentioning the total number of notes and its face value along with the serial numbers. This omission goes to the root of the prosecution case. Particularly, when the witnesses to Seizure Mahazar has turned hostile.

21 This case clearly demonstrates how investigation in serious crime can be spoiled by untrained insensitive persons put in charge of investigation. From the inception of receiving the secret information, PW-1 and PW-7 has not acted in accordance with the procedure. When they had time to record the information in GD and to inform the Joint Commissioner to get instruction and form a special team had no time to register the FIR. Though PW-7 had deposed that he deputed a Head Constable to intimate about the premise search to the Metropolitan Magistrate no proof for the same produced. Neither the Joint Commissioner nor members of the special team examined to show that really PW-1 received a secret information and based on the information entry in GD was made, the Joint commissioner was informed and on his advice special team formed.



22 The Mahazars prepared for the seizure of counterfeit currency as observed, does not bear the necessary details to test, identify and satisfy what recovered from the accused was examined by experts and opined as counterfeit. The prosecution has not only failed to correlated the notes alleged to have recovered from the possession of the appellants, but also failed to establish the exact face value of the counterfeit currency seized and what was sent for examination by expert was the currency what seized from the appellants.

23 On the part of the property clerk at Metropolitan Magistrate, GT, she must have refused to receive the Form 91 regarding the currency produced without the face value of the currency, Serial Number and total number of notes in each denomination. Her failure also adds reason to disbelieve the case of the prosecution that the currency examined at the lab in Nazik is the currency seized from the accused.

24 The prosecution has miserably failed to prove that M.O.1 to M.O.6 were recovered from respective Appellants. PW-1 and PW-7, whose evidence not consistent and heavily doubtful. Their version not corroborated in view of the



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hostility of the independent witnesses to the seizure. Next, prosecution has failed to prove that the counterfeit currencies were manufactured with the help of M.O.7 to M.O.19. The report of the forensic expert marked as Ex.P24 has given a clear opinion that in the computer storage images no incriminating files, documents and images related to the case found. The version of the prosecution that by using the computer and printer seized from A-3, fake currencies were manufactured is completely ruled out from the expert's opinion. Strangely, the Trial Court has observed that those incriminating material might have been deleted by the accused, unaware of the technology available to retrieve files deleted. Likewise the fact that the M.O.1 to M.O.6 the marked currency seized from the possession of the accused person though not proved and left uncorroborated, the Trial Court has erroneously concluded that the possession of counterfeit currency by the accused is proved by the prosecution.

25 The material evidence both documentary and oral relied by the prosecution are self contradictory and doubtful, sufficient enough to demolish their case. While so, facts such as (i) FIR registered after completion of search and seizure though the information is about a cognizable offence of grave nature. (ii)



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Lack of corroboration for seizure, (iii) Failure of identity regarding material seized from the accused persons and (iv) the opinion of the expert in Ex.P24, that there is no telltale evidence in the computer peripherals to indicate the crime of printing counterfeit currency been done using those computer and the peripheral all together renders the prosecution case unbelievable. Hence the Trial Court judgment contrary to facts and evidence is liable to be set aside.

26 As a result, the Criminal Appeal Nos.436, 458 and 476 of 2020 are allowed. The judgment of the Trial Court is set aside. The appellants are set at liberty. Fine amount, if any paid by the accused shall be refunded to them. Bail bond if any executed by the accused shall stand discharged.

24.03.2023

Index : Yes/No
Speaking order/Non-speaking Order
rpl

To,

1.The II Additional Sessions Court, Chennai.

20/22



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2.The Inspector of Police,
Counterfeit Currency Wing,
Crime Branch Central Investigation Department,
Chennai-2.

3.The Public Prosecutor,
High Court of Madras,
Chennai.



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Crl.A.Nos.436, 458 & 476 of 2020

Dr.G.JAYACHANDRAN.J.,

rpl

Delivery Judgment made in
Criminal Appeal Nos.436, 458 & 476 of 2020

24.03.2023