

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.03.2023

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.A.(MD).Nos.319 & 383 of 2007
and
Crl.M.P(MD)No.7367 of 2021

1.Crl.A(MD)No.319 of 2007:-

S.Sermakani

... Appellant/Accused No.3

Vs.

The Inspector of Police,
C.B.C.I.D,
Madurai.
(In Crime No.1 of 2000)

... Respondent/Complainant

PRAYER : Criminal Appeal filed under Section 374(2) of Cr.P.C to call for the records in S.C.No.389 of 2006, dated 29.06.2007 passed by the learned Additional District and Sessions Judge, Fast Track Court No.III, Madurai and to set aside the same.

For Appellant

: Mr.K.S.Durai Pandian

For Respondent

: Mr.T.Senthil Kumar
Additional Public Prosecutor

2.CrI.A(MD)No.383 of 2007:-

Karuppasamy

... Appellant/Accused No.1

Vs.

The Inspector of Police,
C.B.C.I.D Police (CC Wing),
Madurai.

(In Crime No.1 of 2000)

... Respondent/Complainant

PRAYER : Criminal Appeal filed under Section 374(2) of Cr.P.C to call for the records in S.C.No.389 of 2006, dated 29.06.2007 passed by the learned Additional District and Sessions Judge, Fast Track Court No.III, Madurai and to set aside the same.

For Appellant

: Mr.R.Saravanan
(No appearance)

For Respondent

: Mr.T.Senthil Kumar
Additional Public Prosecutor

COMMON JUDGMENT

These Criminal Appeals have been filed to set aside the order passed in S.C.No.389 of 2006, dated 29.06.2007 on the file of the learned Additional District and Sessions Judge, Fast Track Court No.III, Madurai.

2.The case of the prosecution is that based on a tip-off, Accused No.1/Karuppasamy was arrested in front of the Government Bus depot at K.K.Nagar, Madurai, for possession of Fake Indian Currencies of 21 numbers in the denomination of Rs.100 and Fake American Dollars 2 numbers in the denomination of 100 dollars on 15.03.2000 at 16.00 hours and a case in Crime No.1 of 2000 under Sections 489(B) to 489(C) of I.P.C was registered on the file of the respondent on 15.03.2000 at 19.00 hours. Subsequently, Accused No.2/Narayanan @ Narayanaraja was arrested by the Investigating Officer near Arun Lodge, Srivilliputhur Road, Sivakasi for possession of i) a sheet of 18 steps which were printed in front and back of the American 100 dollars totally 64 sheets, ii) 23 bundles of counterfeit American 100 dollars each bundle consisted of 100 dollar notes, iii) 4 bundles of counterfeit American 100 dollars each bundle consisted of 50 dollar notes and iv) negative films with various conditions on 04.04.2000 at 18.00 hours and his confession statement was recorded. Based on his confession, a house search was conducted at the printing press of Accused No.3/Vijayakumar and 117 Nosin completed counterfeit American 100 dollars, printing machine and related materials used for printing were recovered and Accused No.3 was arrested on the same day on 21.30 hours. During the investigation, on 17.02.2001, at about 08.00 hours, Accused No.4/Sermakani was arrested near

Karpagam Hotel situated in front of Court complex, Madurai for possession of 260 numbers counterfeit American 100 dollars, the serial numbers were tallied with this case American dollars which were seized from the other accused. After completion of the investigation, the final report against Accused Nos.1 to 4 for the offences punishable under Sections 489(A) to 489(D) and 120B of I.P.C was filed on 30.06.2001 before the learned Judicial Magistrate No.I, Madurai and the same was taken on file in P.R.C.No.22 of 2004 on 18.08.2004. Accused No.2/Narayanan @ Narayanaraja died on 28.10.2005 and the charges against him were abated during the trial. Since Accused No.2 died, Accused Nos.3 and 4, namely, Vijayakumar and Sermakani, were arraigned as Accused Nos.2 and 3. The case was committed to the learned Additional District and Sessions Judge, Fast Track Court No.3, Madurai in S.C.No.389 of 2006 on 18.12.2006.

3.In order to bring the charges to home, the prosecution had examined P.W.1 to P.W.9 and marked Exs.P.1 to P.30 and also produced material objects M.O.1 to M.O.11 and on the side of the accused, no one was examined and no exhibits were marked.

4. On perusal of the oral and documentary evidence, the trial Court convicted the accused as follows:-

(i) Accused Nos.1 and 2/Karuppasamy and Vijayakumar for the offence punishable under Section 120(B) r/w 489(A)(C) and (D) of I.P.C and sentenced him to undergo five years Rigorous Imprisonment and imposed a fine of Rs.3,000/- and in default, he shall undergo six months Rigorous Imprisonment;

(ii) Accused No.2/Vijayakumar for the offence punishable under Section 489(A) of I.P.C and sentenced to undergo five years Rigorous Imprisonment and imposed a fine of Rs.3,000/- and in default, he shall undergo six months Rigorous Imprisonment;

(iii) Accused Nos.1 and 2/Karuppasamy and Vijayakumar for the offence punishable under Section 489(C) of I.P.C and sentenced to undergo three years Rigorous Imprisonment and imposed a fine of Rs.1,000/- and in default, he shall undergo three months Rigorous Imprisonment;

(iv) Accused No.2/Vijayakumar for the offence punishable under Section 489(D) of I.P.C and sentenced to undergo

seven years Rigorous Imprisonment and imposed a fine of Rs. 5,000/- and in default, he shall undergo six months Rigorous Imprisonment; and

(v) Accused No.3/S.Sermakani for the offence punishable under Section 489(B) of I.P.C and sentenced to undergo five years Rigorous Imprisonment and imposed a fine of Rs.3,000/- and in default, he shall undergo six months Rigorous Imprisonment.

The trial Court also ordered to set off the remand period under Section 428 of Cr.P.C in S.C.No.389 of 2006 on 29.06.2007.

5. Aggrieved by the same, each accused filed separate appeals before this Court. This Court already heard the appeal in Crl.A(MD)No.299 of 2007 filed by Accused No.2/J.Vijayakumar and dismissed the same by Judgment, dated 27.10.2018. In fact, aggrieved by the same, the second accused preferred an appeal before the Honourable Supreme Court of India in S.L.P (Criminal) Diary No.36275 of 2019 in I.A.Nos.44172, 44175, 44176 and 44177 of 2020 and the same were dismissed, by order, dated 09.03.2021.

6.The learned counsel appearing for the appellant/Accused No.3 in Crl.A(MD)No.319 of 2007 would submit that no witnesses had spoken about the recovery from Accused No.3 and there was no incriminating evidence to convict Accused No.3 for the offence punishable under Section 489(B) of I.P.C. The arrest of Accused No.3 and recovery of counterfeit U.S dollars are not proved by any evidence. Regarding the place of arrest and recovery are totally contradictory between P.W.1 and P.W.4. As per the seizure mahazar, which was marked as Ex.P.29, Accused No.3 was arrested and seizure was effected near Karpagam Hotel which is situated in front of the Madurai District Court campus. Whereas P.W.1 and P.W.4 had deposed that the arrest of the appellant, recording his confession statement, seizure of counterfeit U.S dollars and preparation of seizure mahazar everything was effected by P.W.7, who is the Investigating Officer, in a lane adjacent to the Karpagam Hotel. That apart, P.W.7 deposed that the arrest, seizure, recording of confession at the junction of Karpagam Hotel and lane which is on the main road. This major infirmity in the evidence of P.W.1, P.W.4 and P.W.7 as to the place of arrest and recovery renders the evidence of those witnesses unreliable and the prosecution failed to prove its case beyond any doubt.

7.The learned counsel appearing for the appellant/Accused No.3 in Crl.A(MD)No.319 of 2007 would further submit that P.W.1, P.W.4 and P.W.7 admitted that the place of arrest and recovery is in District place which Madurai District Court, Hotels, Hospitals and Petrol Bulk etc surround. While being so, instead of taking any effort to prefer any independent witness from the locality P.W.7 had chosen P.W.1 and P.W.4, who are Assistants to the Village Administrative Officers respectively. Therefore, they are interested witnesses to the prosecution. In fact, they also admitted that they used to stand as witnesses in favour of the respondent in the past, which clearly manifest their intimacy with the respondent. He further submitted that the dates recorded under the signatures of P.W.1 and P.W.4 in the confession and seizure mahazars are corrected from 16.02.2001 to 17.02.2001. While cross-examination of P.W.7, it was not answered about the material alteration. It revealed that it was not an incidental one, but an intentional one. Therefore, the prosecution failed to prove even the arrest and the recovery from Accused No.3.

8.The learned counsel appearing for the appellant/Accused No.3 in Crl.A(MD)No.319 of 2007 would further submit that only on the confession statement of the deceased accused Narayanan @ Narayanaraj, who was originally arraigned as

Accused No.2 in the F.I.R, Shanmugam and Shankar @ Jagadeesan were cited as the kingpins of the entire commission of the offence. But the Investigating Officer has not even chosen to array them as an accused. The prosecution also did not explain properly. Except the evidence of P.W.1 and P.W.4, there is absolutely no other material or oral evidence adduced by the prosecution in order to connect Accused No.3 with other accused persons.

9.The learned counsel appearing for the appellant/Accused No.3 in Crl.A(MD)No.319 of 2007 would further submit that so far appellant/Accused No.3 is in prison and incarcerated for the past 3-1/2 years.

10.On a perusal of the materials available on record revealed that serial numbers of counterfeit US dollars are continuous one with the counterfeit US Dollar recovered from other accused persons. P.W.1 and P.W.4 categorically stated about the arrest, seizure mahazar and confession statement of the appellant. Though there was a slight contradiction, it would affect the case of the prosecution since recovery and arrest were categorically proved by the prosecution. The Village Assistant was examined as P.W.1 and he was on duty on 15.03.2000 at his office. Thereafter, P.W.1 and P.W.4 along with the Investigating Officer had taken the

informer and went to the Tamil Nadu State Express Bus Transport Corporation at Madurai, where the informer identified the first accused and he was in possession of counterfeit currency when P.W.7 enquired him and recorded his confession statement in front of P.W.1 and P.W.4. During the arrest, the first accused was in possession of 21 numbers of counterfeit Indian 100 rupees currencies, which was marked as M.O.1 series and two numbers of counterfeit American 100 Dollars, which was marked as M.O.2 series. These counterfeit currencies were seized by P.W.7 under seizure mahazar, which was marked as Ex.P.1.

11. In respect of arrest place, P.W.1 had deposed that the first accused was arrested in front of TNSTC Depot at K.K Nagar Bus stop. In respect of confession and recovery, he had deposed that the first accused produced 21 numbers of counterfeit Indian 100 rupees currencies and two numbers of counterfeit American 100 dollars. Based on his confession, the deceased second accused was arrested by P.W.7 and he was in possession of 18 sheets which were printed in front and back of the American 100 dollars totally 64 sheets, 23 bundles of counterfeit American 100 dollars each bundle consisted of 100 dollar notes, 4 bundles of counterfeit American 100 dollars each bundle consisted of 50 dollar notes and negative films with various conditions on 04.04.2000 at about 06.00 p.m. Based

on his confession, a search was conducted at the printing press of Accused No.2/Vijayakumar (earlier Accused No.3) and 117 Nosin completed American 100 dollars, printing machine and related materials used for printing were recovered and he was arrested at about 09.30 p.m. Therefore, the prosecution categorically proved its case as against Accused No.1/Karuppasamy and Accused No. 2/Vijayakumar. In so far as Accused No.2/Vijaykumar is concerned, this Court, by order, dated 27.10.2018 dismissed the appeal filed by him in Crl.A(MD)No.299 of 2007 and confirmed the conviction and sentence imposed by the trial Court.

12.Since the prosecution categorically proved its case as against Accused No.1/Karuppasamy, Crl.A(MD)No.383 of 2007 is dismissed and the conviction and sentence recorded against Accused No.1 by the learned Additional District and Sessions Judge (Fast Track Court No.III), Madurai, Madurai District in S.T.C.No.389 of 2006 vide Judgment dated 29.06.2007 is confirmed. The trial Court is directed to secure the appellant/Accused No.1 to undergo the remaining period of sentence. The period of sentence already undergone by the accused is given set off under Section 428 of Cr.P.C.

13.In so far as the appellant/Accused No.3/S.Sermakani is concerned, he is still incarceration for the past 3-1/2 years. The contradictions found between P.W.1 and P.W.4 and P.W.7 in so far as the arrest place, recovery and recording confession statement show the discrepancies. However the serial numbers of counterfeit US dollar are continuous one with the counterfeit US Dollar recovered from other accused persons. However, there is no evidence to show that the appellant/Accused No.3 was indulging in using, selling or buying or receiving or otherwise trafficking or using forged or counterfeit currency. Mere possession of counterfeit currency notes is not sufficient for conviction of the accused under Section 489B of I.P.C.

14.Considering all the relevant facts and attending circumstances as well as the aforementioned proposition of law, it appears that ends of justice would be met if the sentence of imprisonment of 5 years awarded by the trial Court be reduced to the period already undergone by the appellant/Accused No.3 is concerned.

15.In view of the above, the conviction imposed by the Courts below for the offence punishable under Section 489(B) is confirmed, and the sentence imposed by the Courts below is hereby modified to the period which was already undergone by the appellant/Accused No.3/S.Sermakani. **Accordingly, Crl.A(MD)No. 319 of 2007 is partly allowed.** Consequently, connected Miscellaneous Petition is closed.

29.03.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
ps

To

- 1.The Additional District and Sessions Court,
Fast Track Court No.III,
Madurai.
- 2.The Inspector of Police,
C.B.C.I.D,
Madurai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

G.K.ILANTHIRAIYAN, J.

ps

CRL.A.(MD).Nos.319 & 383 of 2007

29.03.2023