IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 4TH DAY OF NOVEMBER 2015/13TH KARTHIKA, 1937

CRL.A.No. 643 of 2003 ( )

AGAINST THE JUDGMENT IN SC 258/2002 of ADDL. SESSIONS COURT, ALAPPUZHA DATED 29.3.2003

APPELLANTS/ACCUSED 2 TO 4:
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1. MOHANAN, S/O. PALANI,
NAICKKKENVELI VEEDU,
KOMALAPURAM MURI,
MANNANCHERRY PANCHAYATH,
WARD -XI,
NORTH ARYAD, ALAPPUZHA.

2. REGHU, S/O/DAMODARAN,
N.G. SADANAM HOUSE,
CHATTANNUR PANCHAYATH,
WARDNO.5, KOLLAM DISTRICT.

3. ASOK KUMAR, S/O.KRISHNAN,
ASOK NIVAS, S.L.PURAM,
KANJIKUZHY PANCHAYATH,
WARD NO.1, ALAPPUZHA.

BY ADVS.SRI.S.SANAL KUMAR
SMT.BHAVANA VELAYUDHAN

RESPONDENT/COMPLAINANT:

STATE OF KERALA REP.BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 07.10.2015, THE COURT ON 04-11-2015 DELIVERED THE FOLLOWING:

K. RAMAKRISHNAN, J.

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Crl.A.No.643 of 2003

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Dated this the 4th day of November, 2015

JUDGMENT

Accused 2 to 4 in SC.No.258/2002 on the file of the Additional Sessions Court, Alappuzha are the appellants herein.

2. The appellants along with one Abdul Jabbar was charge sheeted by the detecting officer CBCID(CFS), Trivandrum in CBCID (CFS) Crime No.17/CR/93, Thiruvananthapuram (old Crime No.12/93 of Edathua police station) under sections 489 B and 489 C read with Section 34 of the Indian Penal Code.

3. The case of the prosecution in nutshell was that on 23.1.1993, at about 3 a.m, at Thakazhi Kadathukadavu on the side of Neerettupuram-Thalavadi area, the deceased first accused was found to be in possession of twenty rupee counterfeit notes and also five numbers of hundred rupee counterfeit notes and second accused was found to be in possession of 23 numbers of fifty rupee counterfeit notes, third accused was found to be in possession of thirty numbers of fake hundred dollars, fourth accused was found to be in possession of four numbers of hundred rupee counterfeit

currency notes and they were in possession of the same knowing that they were in possession of the counterfeit currency notes with an intention to circulate the same as genuine notes and thereby all of them have committed the offences punishable under sections 489 B and 489 C read with section 34 of the Indian Penal Code.

4. After investigation, final final report was filed before the Judicial First Class Magistrate Court, Amablappuzha, where it was taken on file as C.P.No.9/2001. The learned Magistrate, after complying with the formalities, committed the case to the Sessions Court, Alappuzha under section 209 of the Code of Criminal Procedure (hereinafter referred to as 'the Code'). After committal, the Sessions Court took cognizance of the case as S.C.No.258/2002 and thereafter it was made over to the Additional Sessions Court, Alappuzha for disposal.

5. During the pendency of the proceedings, the first accused died and charge against him was abated. So, accused 2 to 4, who are the appellants herein, were alone proceeded with.

6. When the accused appeared before the court below, after hearing both sides, charge under sections 489 B and 489 C

read with section 34 of the Indian Penal Code was framed against the accused persons and the same was read over to them and they pleaded not guilty. In order to prove the case of the prosecution, Pws 1 to 8 were examined and Exts.P1 to P4 series, P5, P6 series, P7 series and Exts.P8 to P14 were marked on the side of the prosecution. After closure of the prosecution evidence, the appellants were questioned under section 313 of the Code and they denied all the incriminating circumstances brought against them in the prosecution evidence. They have further stated that they have not committed any offence and no articles were seized from their possession and since they were alleged to be close to the first accused who were accused in other cases including fake note cases, they have been called to the police station and detained them in the police station and they have been falsely implicated in the case. Since evidence in this case did not warrant an acquittal under section 232 of the Code, the appellants were called upon to enter on their defence, but no defence evidence was adduced on their side. After considering the evidence on record, the court below found the appellants not guilty for the offence under section 489 B read with section 34 of the Indian Penal

Code and acquitted them of that charge under section 235(1) of the Code but found the appellants guilty for the offence under section 489 C read with section 34 of the Indian Penal Code and convicted them thereunder and sentenced them to undergo rigorous imprisonment for two years each. Set off was allowed for the period of detention already undergone. Aggrieved by the same, the present appeal has been preferred by the appellants/accused 2 to 4 before the court below.

7. Heard Smt. Bhavana Velayudhan, counsel representing Sri. S. Sanal Kumar, counsel appearing for the appellants and Smt. Seena Ramakrishnan, Public Prosecutor appearing for the State.

8. Counsel for the appellants submitted that the independent witnesses to the seizure did not support the case of the prosecution. Further, there is no evidence to show that the appellants were in conscious possession of the alleged fake currency notes knowing that they were fake notes and with an intention or likely to use the same as genuine notes so as to attract the offences alleged. Further, there is no evidence to show that the alleged fake dollars seized from the possession of the third accused were fake dollar notes as no expert report

was obtained on this aspect. So, according to the learned counsel, the court below was not justified in convicting the appellants for the offences alleged. The prosecution also failed to prove or conduct any investigation regarding the source of fake notes and from whom it was obtained by the accused persons.

9. On the other hand, learned Public Prosecutor submitted that the evidence adduced on the side of the prosecution proved that the accused were in possession of the fake currency notes. The expert opinion proved that they are fake notes and there is no explanation forthcoming from the side of the accused as to how they came into possession of the same. According to the learned Public Prosecutor, the court below was perfectly justified in convicting the appellants for the offences alleged.

10. The case of the prosecution as emerged from the prosecution witnesses was as follows:

On 23.1.1993, PW4, who was working as Sub Inspector of Police, Edathua police station, was doing patrol duty along with Pws 2 and 3 and other police constables in and around Neerettupuram-Thalavadi area and at about 3 p.m, when they reached Thakazhi Kadathukadavu, they saw accused persons four in number including the appellants standing at the turning point of the KSRTC bus and found suspicion about them. First accused was holding a paper packet and when questioned about the same, he was told that it was food packet. Since he had suspicion about the same, PW4 opened the same and found that it contained 14 bundles of ordinary white paper, which were cut to the approximate size of rupees twenty denomination and placed with two twenty rupee notes on both sides and he was also found to be in possession of five, hundred rupee counterfeit notes in his pocket. When body of the second accused was searched, twenty three numbers of fifty rupee counter feet notes were found in his pocket. When body of the third accused was searched, thirty numbers of forged hundred dollars were found in his pocket. When body of the fourth accused was searched, he was found to be possession of four numbers of hundred rupee counterfeit currency notes, which were marked as MO1 to MO5 series. He seized the same as per Ext.P2 mahazer in the presence of PW1 and another. Thereafter he arrested the accused and prepared arrest memo and came to police station and registered Ext.P3 First

Information Report as Crime No.12/93 of Edathua police station against four accused persons including the appellants under section 489 B read with Section 34 of the Indian Penal Code. He had produced the accused persons before court along with remand report. He produced the contraband articles seized along with Ext.P4 property list. Thereafter investigation was transferred to CBCID (CFS), Trivandrum as related to counterfeit notes and investigation was undertaken by PW5, the detective officer. They re-registered the case as CBCID (CFS) Crime No.17/CR/1993/Trivandrum and gave Ext.P5 report regarding the same. For the purpose of conducting search of house of accused 2 to 4, Exts.P6 search memos were sent to court and search was conducted in their house in the presence of witnesses and Ext.P7 series search lists were prepared, but no incriminating articles were seized from their house. He gave request to court for sending the fake currency notes for examination to bank note press and the fake dollars to CMP Nazik. Further investigation in this case was conducted by PW6, his successor. He was conducting investigation from 7.11.1994. He had received another hundred rupee fake notes of the same series as sent by the Additional Director General of Police, which was seized as per Ext.P8 mahazer and identified as MO7 and sent to court along with property list. Further investigation in this case was conducted by PW7. He sent Ext.P9 forwarding note with a request for sending some of the fake dollars for examination to interpol and Ext.P10 report was obtained from bank note press stating that the currency notes seized were fake notes. Further investigation in this case was conducted by PW8, the successor detective officer. He sent Exts.P11 to P14 requests along with the fake notes received from others having similar serial number. He gave report to add section 489 C of the Indian Penal Code as well. He completed the investigation and submitted final report.

11. PW1 is the independent witness to the alleged seizure. He did not support the case of the prosecution. He denied having stated in Ext.P1. Though he had admitted that he had signed the mahazer prepared by the police, but that was not marked through him. He had stated that he knew the accused persons and he had seen them in town. So, it is clear from this that he is now trying to help the accused persons and that was the reason why he is not supporting the case of the prosecution.

12. PWs 2 and 3 are the police constables, who accompanied PW4, the detecting officer, in this case. PW4 had categorically stated that on 23.1.1993, at about 3 a.m, he along with Pws 2 and 3 and others were doing night patrol duty and they reached near Thakazhi Kadathukadavu, they saw the accused persons standing at the turning point of the KSRTC bus. The first accused was holding a packet in his hand. When PW4 questioned him, he told that it was food packet. Since PW4 got some suspicion about the same, he opened the same and found that it contained MO1 series 14 bundles of ordinary white paper which were cut approximately to the size of rupees twenty having two notes on both ends of the bundle. When he further examined deceased first accused, he was found to be in possession of MO2 series five hundred rupee counterfeit notes. When he conducted body search of the second accused, he found MO3 series twenty three number of fifty rupee counterfeit notes in his shirt's pocket. When he conducted body search of the third accused, he found MO4 series fifty numbers of fake hundred dollars of foreign currency and when he conducted body search of the forth accused, he found MO5 series four hundred rupee counterfeit

notes from his possession. He had seized all these notes as per Ext.P2 seizure mahazer. Thereafter he arrested the accused persons and came to the Police station and registered crime against four accused persons originally for the offence under section 489 B read with section 34 of the Indian Penal Code. He had identified MOs 1 to 5 as well. Pws 2 and 3 also corroborated the evidence of PW1 on this aspect. They have categorically stated that on naked examination of the notes, it could be found that they are fake notes. They denied the suggestion that appellants were taken from their houses and they were alleged to be friends of the first accused and falsely implicated in the case. Except the suggestion given, there is no other evidence adduced on the side of the defence to prove their false implication. Further, Ext.P10 report shows that the currency notes were fake notes. There is no explanation forthcoming from the side of the appellants as to how they came into possession of these counterfeit notes as well as foreign dollar. It is true that there is no expert opinion obtained as regards the alleged counterfeit dollars said to have been seized from the possession of the third accused namely MO4 series. But it was fake dollar and it can be seen from the naked eye examination itself that they were not genuine dollars. This aspect was not challenged in the cross examination as well. Further, the fact that all the accused persons were arrested together will go to show that they shared the common intention of keeping the fake currency notes with them with the knowledge that they were in possession of the same.

It is true that mere possession of fake notes is not sufficient to attract the offence under section 489 C of the Indian Penal Code. But burden is on the prosecution to prove that they were in possession of the same with knowledge or having reason to believe that they are fake currency notes. It was so held in the decisions reported in **Kuttan Nadar Wilson v. State Rep. By Public Prosecutor** (2000 (2) KLJ 362), **Umashanker v. State of Chhattisgarh** [2001 3) KLT 681 (SC)], **M. Mammutti v. State of Karnataka** (AIR 1979 SC 1705), **Abdul Rahiman v. State of Kerala** (2014 KHC 773) and **Basheer v. State of Kerala** (2006 KHC 1364).

Further, in the decision reported in **Vijayan v. State of Kerala** (2001 (2) KLT 951), it has been observed that if the notes were of such a nature that a mere look at them would convince anybody that they were fake notes, it can be presumed that he had knowledge or reason to believe that they are counterfeit currencies so as to attract the offence under section 489 C of the Indian Penal Code. The same view has been reiterated in the decision reported in **Ponnuswamy v. State** [1995 Crl.L.J 2658 (SC)]. In that case, it was observed that, if accused had no explanation for possession of the counterfeit notes, then it can be presumed that he had knowledge or reason to believe that they are counterfeit currency notes and they were in possession of the same with that knowledge so as to attract an offence under section 489 C of the Indian Penal Code.

Further, in the decision reported in **State of Kerala v. Mathai Varghese** (AIR 1987 SC 33), it has been observed that the expression currency notes covers not only currency notes of India, but also currency notes of other country. So in view of the dictum lad down in the above decisions and also on the basis of the evidence adduced on the side of the prosecution, it can be safely concluded that the prosecution has proved beyond reasonable doubt that the appellants were found to be in possession of fake currency notes and fake foreign dollars knowing that or with the reason to believe that they are fake currency notes and that they are likely to be used as genuine notes and thereby committed the offence punishable under section 489 C read with section 34 of the Indian Penal Code and rightly convicted them for the said offence and the finding does not call for any interference.

13. Counsel for the appellants submitted that the sentence imposed is harsh. The court below sentenced the appellants to undergo rigorous imprisonment for two years each and set off was allowed for the period of detention already undergone. It is true that offences dealing with counterfeit currency is a serious offence, which affects economy of the country. It must be dealt with severely as well. The offence under section 489 C is a lessor offence when compared to offence under sections 489 A, B, D and E of the Indian Penal Code. Further, considering the gravity of the offence, legislature itself has thought that punishment of imprisonment which may extent to 7 years or with fine or with both. Discretion has been given to the courts in the case of sentencing. The prosecution has no case that appellants have involved in other crime of similar nature earlier or they are habitual offenders in trafficking fake currency notes. So

considering the circumstances, this Court feels that sentencing them to undergo rigorous imprisonment for nine months each and also to pay a fine of Rs.10,000/- each, in default to undergo rigorous imprisonment for six months each will be sufficient and that will meet the ends of justice. So the sentence imposed by the court below is set aside and the same is modified as follows:

The appellants are sentenced to undergo rigorous imprisonment for nine months each and also to pay a fine of RS.10,000/- each, in default to undergo rigorous imprisonment for three months each. Set off was allowed for the period of detention already undergone.

In the result, the appeal is allowed in part. The order of conviction passed by the court below against the appellants under section 489 C read with section 34 of the Indian Penal Code is hereby confirmed. But rigorous imprisonment of two years is set aside and the same is modified as follows:

The appellants are sentenced to undergo rigorous imprisonment for nine months each and also to a pay a fine of Rs.10,000/- each, in default to undergo rigorous imprisonment for three months each. Set off was allowed for the period of detention already undergone.

Office is directed to communicate a copy of this judgment to the concerned court immediately.

Sd/-

K. RAMAKRISHNAN, JUDGE

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/true copy/

P.S to Judge

K. RAMAKRISHNAN, J.

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Crl.A.No.643 of 2003

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4th day of November, 2015

JUDGMENT