

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 30TH DAY OF SEPTEMBER 2015/8TH ASWINA, 1937

CRL.A.No. 1563 of 2003 ()

AGAINST THE JUDGMENT IN SC 630/1997 of
ADDITIONAL SESSIONS JUDGE (FAST TRACK COURT-I),
TRIVANDRUM, DATED 12-09-2003

APPELLANT/ 2nd ACCUSED:

RATNAKARAN NAIR, S/O.MADHAVAN NAIR,
PADMA NIVAS, MELARICODE WARD NO.8,
MARANALLOOR,
NEYATTINKARA TALUK.

BY ADVS.SRI.SASTHAMANGALAM S. AJITHKUMAR
SRI.KRISHNADAS.P.NAIR

RESPONDENT/COMPLAINANT:

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

PUBLIC PROSECUTOR SMT. SEENA RAMAKRISHNAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 16-06-2015,
ALONG WITH CRA.1617/2003 & CRA.1697/2003, THE COURT ON 30.09.2015
DELIVERED THE FOLLOWING:

SS

K. RAMAKRISHNAN, J.

Crl. Appeal No.1563/2003, 1617/2003
and 1697 of 2003

Dated this the 30th day of September, 2015

JUDGMENT

Crl.Appeal No.1563/2003 was filed by the 2nd accused, while Crl.Appeal No.1617/2003 was filed by the first accused and Crl.Appeal No.1697/2003 was filed by the 3rd accused, all in S.C.No.630/1997 on the file of the Additional Sessions Court, (Fast Track-I) Thiruvananthapuram.

2. The appellants along with four others were charge-sheeted by the Deputy Superintendent of Police, CBCID/CFS Unit, Thiruvananthapuram in CBCID/CFS Crime No.86/CR/92 of Thiruvananthapuram Unit (Original Crime No.16/92 of Valiyathura police station) under Section 489B and 489C read with Section 34 of the Indian Penal Code.

3. The case of the prosecution in nut shell was

that, accused Nos.1 to 8 in furtherance of their common intention to possess and sell and receive counterfeit currency notes and thereafter to use the same as genuine currency notes and circulate the same among others as genuine notes, knowing fully well that possession and sale and receipt of counterfeit currency notes is an offence with the intention or knowledge that they are in possession of counterfeit notes for that purpose, on 24.01.1992 at 6.40 p.m., at a Mandapam near Shankumugham Junction, accused Nos.1 to 4 were found to be in possession of counterfeit notes of hundred denomination of Nos.2,1,1 and 1 respectively and on the basis of the information given by them, they went near Vinayaka Tourist Home at Thampanoor at about 8.10.p.m., accused Nos.5 to 8 were present and 5th accused was found to be in possession of 126 such fake currency notes of 100 rupee denomination and 7th accused was found to be in possession of one such

counterfeit note and 8th accused was found to be in possession of genuine currency notes and coins worth ₹15,752.50 and 5th accused was in possession of the counterfeit notes with an intention and knowledge that they are counterfeit notes for the purpose of selling the same to accused Nos. 6 to 8 who were present there for that purpose and 5th accused had circulated the same through first accused also and thereby all of them have committed the offence punishable under Section 489B and 489C read with Section 34 of the Indian Penal Code.

4. After investigation, final report was filed before the Judicial First Class Magistrate Court-II, Thiruvananthapuram, where it was taken on file as C.P.No.146/96. Only accused Nos.1 to 6 appeared and 7 and 8 were absconding. So the case against accused Nos.1 to 6 was committed to the Sessions Court by the learned Magistrate under Section 209 of the Code of Criminal

Procedure. After committal, the case was taken on file as S.C.No.630/97 on the file of the Sessions Court, Thiruvananthapuram. Thereafter it was made over to Additional Sessions Court (Ad-hoc-I), Thiruvananthapuram, for disposal. During the pendency of the case, 3rd accused absconded and so the case against accused Nos.1, 2, 4 to 6 was proceeded with by the court below.

5. When the above accused appeared before the court below, after hearing both sides, charge under Section 489B and 489C read with Section 34 of the Indian Penal Code was framed against the accused persons who were facing trial and the same was read over and explained to them and they pleaded not guilty. In order to prove the case of the prosecution, PWs 1 to 10 were examined and Exts.P1 to P10 and MOs.1 to 9 were marked on the side of the prosecution. After closure of the prosecution evidence, the above accused were questioned under Section 313 of

the Code of Criminal Procedure (hereinafter called 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. On 21.01.92 at about 8.30 p.m., the Circle Inspector of police, Valiyathura police station came to the house of the first accused and took him to the police station, while so the local people protested and the 6th accused had even questioned the act of the police taking the first accused and so he was also taken along with first accused and then they went to the police station where 4 or 5 persons were also brought later and thereafter they were falsely implicated in the case and produced before the magistrate court on 25.01.1992, after keeping them in illegal custody for four days and they have not committed any offence. Since the evidence in the case did not warrant an acquittal under

Section 232 of the Code of Criminal Procedure, the accused were called upon to enter on their defence, but no defence evidence was adduced on their side.

6. After considering the evidence on record, court below found the 6th accused not guilty of the offence alleged and he was acquitted of the charge levelled against him giving him the benefit of doubt under Section 235(1) of the Code. But court below found the appellants not guilty for the offence under Section 489B read with Section 34 of the Indian Penal Code and acquitted them of that charge under Section 235(1) of the Code of Criminal Procedure, but found them guilty for the offence under Section 489C read with Section 34 of the Indian Penal Code and convicted them thereunder and sentenced them to undergo rigorous imprisonment for three years each and also to pay a fine of ₹2,000/- each, in default to undergo rigorous imprisonment for three months each. Set off was allowed

for the period of detention already undergone by them under Section 428 of the Code of Criminal Procedure. Aggrieved by the same, the above appeals were filed by the appellants the respective accused mentioned above in the lower court. Since all these appeals arose out of the same judgment, this court is disposing of the appeals by a common judgment.

7. Heard the counsel for the appellants and Smt.Seena Ramakrishnan, Public Prosecutor appearing for the State.

8. The counsel for the appellant in Crl.Appeal No.1617/2003 argued that the prosecution has failed to prove the seizure and arrest of the first accused and no independent witnesses to the seizure supported the case of the prosecution. Further there is no evidence to show that the subsequent recovery alleged to have been made was on the basis of any statement given by the first accused.

Further it will be seen from Ext.P1 and P4 mahazers that the handwriting of the names and addresses written are in different handwriting and also the signature of the witness was obtained on the margin of Ext.P4 which also will go to show that the witnesses have not signed the same as claimed by the prosecution. It was later prepared and the signature of the witnesses were obtained from the police station. Further there were only 132 fake notes were alleged to have been seized from the possession of the accused, but Ext.P10 will go to show that 150 such notes were received and it was examined and found to be fake currency notes. He had also argued that Ext.P10 cannot be relied on without examining the person who prepared the same and explain the circumstances under which he happened to examine 150 such notes, though as per the evidence only 132 notes were seized. Further there was delay in producing the articles before court. There is no

link between the first accused and other accused were established and also the source of the currency notes were not traced out as well. He had relied on the decisions reported in **Abdul Rahiman v. State of Kerala (2014 KHC 773)**, **Kuttan Nadar Wilson v. State Represented by Public Prosecutor (2002(2) KLJ 362)** and **Umashanker v. State of Chhattisgarh [2001(3) KLT 681 (SC)]**, **M. Mammutti v. State of Karnataka (AIR 1979 (SC) 1705)**, **Raveendran v. State of Kerala (2007 (2) KHC 818)**, **Basheer v. State of Kerala (2006 KHC 1364)** in support of his contention. He had also argued that, no arrest memo has produced in this case and that also fatal and that will affect the case of the prosecution and he had relied on the decision reported in **Ramankutty v. Excise Inspector, Chelannur Range (2013(3) KHC 308)**, in support of his preposition. So according to him, the prosecution has not proved the mens rea of the first

accused to keep the article knowing that it is fake note and with an intention to use the same as genuine note, unless these ingredients are proved, it cannot be said that he had committed the offence punishable under Section 489C of the Indian Penal Code. The counsels appearing for the appellants in Crl.Appeal No.1697/2003, Crl.Appeal No.1563/2003 also supported the submissions made by the counsel for the appellant in Crl.Appeal No.1617/2003. They have also argued that there is no evidence adduced on the side of the prosecution to prove as to who had entrusted the counterfeit notes to 5th accused. Though it was alleged by the prosecution that it was handed over to 5th accused by one Jayam of Tamil Nadu and they seized the occupancy register of the lodge by name SNG Lodge, Kaliyikkavila, no attempt was made to locate him and find out the link between him and other accused persons, so as to connect them with the transaction. Further according to the

counsel, even as per the evidence of the prosecution witnesses that only with careful scrutiny, it can be found to be false notes. So under the circumstances it cannot be said that they were in possession of the counterfeit notes with the knowledge that they are counterfeit notes. So he also prayed for acquittal of the appellants. They have also argued that the sentence imposed is harsh.

9. On the other hand learned Public Prosecutor submitted that though independent witnesses to the seizures did not support the seizure as such, but they have admitted their signature in the seizure mahazar and the attestor to Ext.P4 even admitted that he had signed the mahazar which was completely written, that too from near Vinayaka Tourist Home and he reached there on seeing the gathering of people there. Further the person who prepared the mahazar had explained the circumstances under which such difference was seen in Ext.P1 and P4 mahazars, there

is nothing to disbelieve his evidence on this aspect. Learned Public Prosecutor also argued that there is no explanation forthcoming from the side of the accused as to how they came into possession of the fake notes so as to infer whether they had mens rea to possess the same or not. Once the possession of the counterfeit notes were proved with the accused persons and if no explanation was offered, then it can be presumed that, they were in possession of the same with an intention or knowledge that it is fake notes. Learned Public Prosecutor also argued that though they had a case that they have been arrested on 21.01.1992 and kept in illegal custody for four days and produced before court only on 25.01.1992 along with other accused persons, they have not adduced any evidence to prove such false implication or illegal custody. Further the prosecution witnesses including the investigating officers namely the official witnesses have stated that they were in possession

of the article till it was produced in court and explained the delay for producing the same as well. So under the circumstances, court below was perfectly justified in convicting the appellants for the offence alleged. Further considering the nature of offence alleged, the sentence imposed is also proper and no interference is called for.

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

On 24.01.1992 at about 6.30 p.m., while PW9 Sri. Madhu, Circle Inspector of Police, Poonthura Circle was doing patrol duty along with PW6 and other police party in connection with investigation of Crime No.15/1992 of Valiyathura police station and when they reached near Shankumugham Beach Junction, he saw accused Nos.1 to 4 standing near a Mandapam there and on seeing the police party, they tried to go away from that place. So he stopped the vehicle and reached there and when he questioned

them, they gave contradictory answers. So he conducted body search of first accused and found that he was in possession of two 100 rupee notes, which was found to be not genuine notes, as he found on examination that the paper was not the same and there were colour changes on the notes. He had also seized one such note each from accused Nos.2 to 4 and arrested the accused persons and seized the notes which later identified as MO1 series as per Ext.P1 mahazar in the presence of PW1 and another.

11. Thereafter he came to police station along with accused Nos.1 to 4 and the articles seized and registered Ext.P8 first information report as Crime No.16/1992 of Valiyathura police station against accused Nos. 1 to 4 under Sections 489B and 489C read with Section 34 of the Indian Penal Code. When accused Nos.1 to 4 were questioned, it was revealed that four persons were waiting near Vinayaka Tourist Home, Thampanoor, for

the purpose of handing over the fake notes to persons coming from Karnataka. Accordingly PW9 along with police party and accused Nos.1 to 4 went to Thampanoor and when they reached in front of Vinayaka Tourist Home, Near New Theater at Thampanoor, they saw four persons standing on the side of the road and 4th accused pointed out them as the persons and accordingly when he went near them and questioned them and ascertained their names and thereafter when 5th accused was examined, he found 126 hundred rupee denomination fake notes similar to that of MO1 series seized from the possession of accused Nos.1 to 4 and when he examined 6th accused, no articles were found with him, when he examined 7th accused, he found one such fake note of hundred rupee denomination and when he examined 8th accused, he found MO4 series genuine notes, MO5 purse, MO6 driving licence, MO7 tiller card MO8 and MO9 series currency notes and coins of various

denominations and he seized the same as per Ext.P4 mahazar in the presence of PW2 and another. Thereafter he arrested them and he came to police station and gave Ext.P9 report adding accused Nos.5 to 8 also in the array of accused. Thereafter the case was transferred to CBCID/CFS Unit, Thiruvananthapuram, where it was registered as CBCID(CFS)Cr.No.86/CR/92 of Thiruvananthapuram Unit. Investigation of the case was originally taken over by PW8, who gave Ext.P7 report intimating the factum of taking over of investigation to court.

12. When he questioned 5th accused, it was revealed that the fake notes were supplied to them by one Jayam of Tamilnadu from SGN Tourist Home, Kaliyikkavila and accordingly he went to that lodge and seized the occupancy register and prepared Ext.P5 mahazar seeing that in the presence of PW3 and another. He questioned CWs 1 to 3, 5 and 6 and recorded their statements. On

09.11.1992 he went to SN Tourist Home and seized the occupancy register of that Tourist Home and prepared the mahazar regarding the occupation of Room No.27 in that Lodge as per Ext.P6 mahazar in the presence of PW4 and another. Thereafter, investigation in this case was conducted by CW16/ Sri.P.Rajasekhara Karanavar, who is no more. Thereafter the investigation was conducted by PW7, he questioned CWs 9 to 13 and recorded their statement. He had undertaken the investigation from CW16, late Sri.P.Rajasekhara Karanavar. Thereafter the investigation was conducted by PW10. The articles were produced before court along with property list by PW9. As per the request of the investigating officer, the fake notes were sent for examination to 'Bank Note Press' and Ext.P10 report obtained, which shows that the notes seized are not genuine notes. PW10 completed the investigation and submitted final report.

13. Accused Nos.3, 7 and 8 were absconding, so the case against them was split up and accused Nos.1, 2, 4 to 6 alone were tried, out of which 6th accused was acquitted by the court below. The prosecution relies on the evidence of PWs 1, 2, 9 and PW6 to prove the seizure and relies on Ext.P1, P4 and P10 for that purpose. PW1 is the attestor to Ext.P1 mahazar. Though he admitted his signature in Ext.P1, he denied having seen the actual seizure. According to him, he was the Secretary of the Youth Congress of that area at that time and on 24.01.1992, he got information that some of his party workers were taken into custody by the police, and he went to police station to enquire about the same, while so he happened to sign Ext.P1 mahazar from the police station. According to him it was a blank paper he signed. It is highly improbable and unbelievable that, a person of that status claims to be a Secretary of Youth Wing of a responsible political party will

be signing a blank paper at the request of the police. So it is clear from this that he is now trying to help accused Nos. 1 to 4 and that was the reason why he was not supporting the case of the prosecution.

14. PW2 had admitted his signature in Ext.P4 mahazar and he had also admitted that on 24.01.1992 after 8.00 p.m., while he was at Thampanoor, he saw some crowd gathered in front of Vinayaka Tourist Home, near New Theatre, Thampanoor, at that time police were preparing some mahazar and as requested by the police, he signed Ext.P4 mahazar. He had admitted that he had signed on the margin of the duly prepared mahazar. The entire mahazar was completed at the time when he signed the mahazar at the margin as well. But he had stated that he did not see the seizure as such. So it is clear from his evidence that he signed Ext.P4 mahazar from the place of occurrence from where accused Nos. 5 to 8 were arrested

by PW9 and it was also admitted by him that he had signed the mahazar and it was told by the police that he was signing the mahazar of seizing fake currency notes. So the seizure of fake currency notes in front of Vinayaka Tourist Home, near New Theater, Thampanoor, was proved through the evidence of this witness and the suggestion given to him is that he signed the mahazar from the police station was denied by him as well. So under the circumstances there is nothing to disbelieve the preparation of Ext.P4 mahazar at the time of seizure itself from the place of seizure.

15. PW9 is the detecting officer in this case. He was working as Circle Inspector of Police, Poonthura police station at the relevant time and when he went for patrol duty in connection with investigation of crime No.15/92 of Valiyathura police station along with PW6, the police constable and others and when he reached near the Shankumugham Junction, he saw accused Nos.1 to 4

standing there and talking to each other and on seeing the police party, they moved away from that place towards one of the mandapam situated there and immediately he stopped the jeep and went near them and stopped them and when he questioned them, they disclosed their identity and thereafter when he made their body search, he found two hundred rupee denomination fake note from first accused and one such note each from accused Nos. 2 to 4 which were later identified by him as MO1 series and when he questioned them it was revealed that they got it from a person who will be waiting in front of Vinayaka Tourist Home, near New Theater, Thampanoor, for the purpose of circulating more notes to persons coming from Karnataka at 8.00 p.m. He arrested them and seized MO1 series fake currency notes as per Ext.P1 mahazar in the presence of PW1 and another and came to police station and registered Ext.P8 first information report as Crime No.16/1992 against

accused Nos 1 to 4 under Sections 489B and 489C read with Section 34 of Indian Penal Code against accused Nos 1 to 4. Thereafter along with accused Nos. 1 to 4 he went to Thampanoor and when he reached near New Theater, he saw four persons standing in front of SNV Tourist Home and they were pointed out by accused Nos. 1 to 4 as the persons whom they intended. They went there and stopped them. On examination of body of 5th accused, there was a bundle kept in his waist, on examination it was revealed that it contained 125 fake hundred rupee notes similar to that of MO1 series seized from the possession of the first accused with different numbers. When he examined 6th accused, no incriminating articles were seized from his body. When he examined 7th accused, he found one such note and when he examined 8th accused, he found MO4 to MO9. He had identified MO2 series as the fake note seized from the possession of 5th and 7th accused. Thereafter he

arrested them and seized the same as per Ext.P4 mahazar in the presence of PW2 and another. Thereafter he came to police station and produced all the accused persons before court along with remand report. The evidence of PW4 on this aspect was corroborated by the evidence of PW6, the police constable who accompanied him as well. Though they were cross examined at length, nothing was brought out to discredit their evidence on this aspect. PW9 also deposed that, apart from MO1 series and MO2 series, he obtained certain other similar currency notes as sent from State Bank of Travancore, Vizhinjam, which were also produced by him before court as it was having the same serial No. and those fake notes were also sent for examination along with notes seized. So he explained the more number of notes seen in Ext.P10 report, which were said to be examined by the expert there who issued Ext.P10 report.

16. It is true that none of the investigating officers have conducted any investigation regarding the source of fake notes. Further though it was revealed during investigation said to have been disclosed by 5th accused that he obtained the same from one Jayam of Tamil Nadu, from the lodge at Kaliyikkavila in Kanyakumari District, they could not trace out that person. PW4 had stated that he knew 4th accused and used to bring customers to his lodge and he had stated that none of the accused persons had stayed in their hotel. So his evidence will go to show that 4th accused was in the habit of taking customers to the hotel.

17. It is true that in Ext.P1 and P4, the mahazar was prepared in the hand writing of one person and the name and addresses of the witnesses were written in the handwriting of another person. PW9 had stated that Ext.P1 mahazar was prepared as dictated by him by one of the police constable present with him in his handwriting and

after completion of the mahazar by him, he had written the name and address of the witnesses in his hand writing and he had identified his handwriting in Ext.P1 mahazar. Similarly he had also deposed that body of Ext.P4 mahazar was written in the handwriting of one police constable and the name of the witnesses were written in the handwriting of another police constable. Further PW2 had admitted that the had signed Ext.P4 mahazar, which was duly prepared from the place of occurrence. The submission made by the counsel for the appellant that it was signed from police station and that was the reason why the address of the witnesses were written in the handwriting of another person is without any substance.

18. The circumstance under which the name of the witnesses were written in a different handwriting was explained by PW9 as well. Though an accused Nos.1, 2, 4, 5 and 6 had a case that they have been taken into custody

from their house on 21.01.1992 and detained them in the police station and produced before the court only on 25.01.1992, they have not adduced any evidence to prove this fact. If really they were illegally taken on 21.01.1992, they would have made some complaints regarding the same either to the magistrate before whom they were produced or before the higher authorities which had not happened in this case. Mere suggestion of false implication alone is not sufficient to discharge the burden on the part of the accused to prove false implication. If no evidence is adduced on the side of the accused regarding the false implication, then it can be safely concluded that the defence of false implication of innocent person as claimed by the accused has not been established.

19. It is true that the arrest memo has not been produced before the court. It is true that in the decision reported in **Ramankutty v. Excise Inspector, Chelannur**

Range (2013(3) KHC 308), it has been observed that, arrest memo is a crucial document to be prepared at the time of arrest and non-production thereof is fatal to the prosecution case and if the arrest is not proved beyond reasonable doubt, the entire case set up by the prosecution will fail. It was relying on the decision reported in **D.K.Basu v. State of West Bengal (1997 KHC 245) = [(1997) 1 SCC 416]** regarding the guidelines issued by the apex court on the question of arrest and production of accused before court etc., that such an observation was made. The guidelines were given in the year 1997 and thereafter that procedure is being followed. The incident in this case happened long prior to that. Further when the accused were produced before the magistrate, they have no complaint of false implication or complaint of any illegal detention, custodial harassment etc. So under the circumstances, non-production of arrest memo in this case

cannot be said to be fatal. Further in the case relied on by the counsel for the appellant, the contraband articles itself were produced before court long after the alleged seizure. So considering the totality of the circumstances which created doubt regarding the prosecution case, this was also taken as one of the ground for giving benefit of doubt to the accused to acquit him, that was not the case in hand.

20. In order to attract the offence under Section 489C of the Indian penal Code, it must be proved by the prosecution that they were not only in possession of the contraband notes, but they were in possession of the same with intention or knowledge that it is fake note and it is likely to be used as genuine note. This was so held in the decision reported in **Abdul Rahiman v. State of Kerala (2014 KHC 773)**, relying on the decision reported in **Vijayan v. State of Kerala (2001 KHC 537) = (2001(2) KLT 951)**, **Gafoor v. State of Kerala (1987 KHC 564) =**

(1987(2) KLT 730), K.Hashim v. State of Tamilnadu (2005 KHC 185) = [(2005) 1 SCC 237], Abdul Fakirsaheb Mamtule v. State of Maharashtra (2001 KHC 2524) = (2001 CRI.L.J.3396), Ponnuswamy v. State (1995 CRI.L.J. 2658), M.Mammutti v. State of Karnataka (AIR 1979 (SC) 1705), Kuttan Nadar Wilson v. State represented by Public Prosecutor (2002 (2) KLJ 362), Umashanker v. State of Chhattisgarh [2001(3) KLT 681(SC)]. Further in the decision reported **Ponnuswami v. State of (1995 Crl.L.J. 2658)**, the Hon'ble Supreme Court has held that, if it is proved that the accused was found to be in possession of forged currency notes and he had no explanation as to where from he had obtained forged currency notes, then the offence under Section 489B of the Indian Penal Code is attracted. The same view has been reiterated in the decision reported in **Raveendran v. State of Kerala**

(2007(2) KHC 818), and Basheer v. State of Kerala (2006 KHC 1364).

21. In this case there is no explanation forthcoming from the side of appellants as to how they came into possession of these counterfeit notes. Further the evidence of PWs 4 and 9 will go to show that, there were colour changes in the note and the paper was not similar to that of the real notes. He had also stated that, it can be found to be fake note with little careful examination. Further the conduct of accused Nos.1 to 4 on seeing the police party going away from the place also gives an indication of their mens rea of possession of some contraband article with them and that was the reason why they moved away from the place to hide themselves from the police party and that reflects their mens rea of knowledge of possession of contraband article with them. Further huge quantity of fake notes were seized from the

possession of 5th accused and one such note was seized from the possession of 7th accused. There is no explanation forthcoming from the side of 5th as to how he came into possession of so much notes. So under the circumstances, the court below was perfectly justified in coming to the conclusion that the accused were in possession of the counterfeit fake note with the knowledge that they are fake currency notes and also that it is likely to be used as genuine notes and thereby they have committed the offence punishable under Section 489C of the Indian Penal Code read with Section 34 of the Indian Penal Code and rightly convicted them for the said offence.

22. It is true that the expert who prepared Ext.P10 was not examined. The counsel for the appellant relied on the decision reported in **Abdul Rahiman v. State of Kerala (2014 KHC 773)** for the proposition that the document could not be relied on without examining the

expert. It is true that in that decision it was observed that if it is document prepared by a person mentioned in Section 292 of the Code of Criminal Procedure and if the genuineness of the documents was challenged, then it can be proved only by examining the person who prepared the same. In this case when Ext.P10 was marked through PW10, no objection was raised regarding the same. Further when Ext.P10 was put to the accused during 313 examination, they did not deny the genuineness of the opinion expressed by the expert as well. So under the circumstances, non examination of the expert in this case is not fatal and this was so observed in the decision relied on by the counsel for the appellant namely **Abdul Rahiman v. State of Kerala** cited (supra). So under the circumstances, the court below was perfectly justified in convicting the appellants for the offence under Section 489C read with Section 34 of the Indian Penal Code and that finding of the

court below does not call for any interference.

23. Counsel for the appellant submitted that the sentence imposed is harsh. The lower court sentenced the appellants who are accused Nos.1, 2, 4 and 5 to undergo rigorous imprisonment for three years each and also to pay a fine of ₹2,000/- each, in default to undergo rigorous imprisonment for three months each. Considering the nature of offence, the court below was perfectly justified in not invoking the provisions of the probation of offenders Act in favour of the appellants. Further since, it is an offence affecting the economy of the country, it must be viewed seriously and persons who are committing the offence has to be dealt with deterrence as well. But at the same time, while imposing the sentence, court will have to consider the antecedents of the accused and also the quantity of contraband article seized and the possibility of reformation etc. But at the same time showing undue leniency will affect

the criminal justice delivery system itself, which will cause loss of faith for the society in the judicial system. Accused Nos.1, 2 and 4 were found to be in possession of only two notes and one such note each respectively and the lower court also found that since prosecution has failed to prove that they were engaged in circulating the same, acquitted them for the offence under Section 489B of the Indian Penal Code. So this court feels that some leniency can be shown to them in awarding the sentence. Reducing the substantive sentence to rigorous imprisonment for one year each and increasing the fine to ₹10,000/- each with default sentence of three months rigorous imprisonment each will be sufficient as far as those accused persons are concerned and that will meet the ends of justice. But as far as the 5th accused is concerned, he was found to be in possession of huge quantity of fake notes and it can be only inferred that it was intended for circulation. So under the circumstances,

the sentence imposed as against the 5th accused appears to be just and proper and it does not call for any interference. So the sentence imposed against accused Nos.1, 2 and 4 is set aside and the same is modified as follows:

Accused Nos.1, 2 and 4 are sentenced to undergo rigorous imprisonment for one year each and also to pay a fine of ₹10,000/- each, in default to undergo rigorous imprisonment for three months each, while the sentence imposed as against the 5th accused is hereby confirmed.

So the appeals are allowed in part. The order of conviction passed against all the appellants under Section 489C read with Section 34 of the Indian Penal Code and sentence imposed against 5th accused are hereby confirmed. But the sentence imposed against accused Nos.1, 2 and 4 is set aside and the same is modified as follows:

Accused Nos.1, 2 and 4 are sentenced to undergo rigorous imprisonment for one year each and also to pay a

fine of ₹10,000/- each, in default to undergo rigorous imprisonment for three months each. Set off is allowed for the period of detention already undergone by them under Section 428 of the Code of Criminal Procedure.

Office is directed to communicate this judgment to the court below at the earliest.

Sd/-

K. Ramakrishnan, Judge

// True Copy//

P.A. to Judge

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