

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

CRL.A.No. 924 of 2004 ()

**AGAINST THE JUDGMENT IN SC 588/1997 of ADDITIONAL SESSIONS COURT FAST
TRACK - I, TRIVANDRUM DATED 22-05-2004**

APPELLANT(S)/ACCUSED.:

**SADANANDAN, S/O.RAMAKRISHNAN ASARI,
SARAVANA BHAVAN, KPV 280, MANKUZHI
ANAYARA DESOM, KADAKAMPILLI VILLAGE
THIRUVANANTHAPURAM.**

**BY ADVS.SRI.SUMAN CHAKRAVARTHY
SMT.K.R.RIJA**

RESPONDENT(S)/COMPLAINANT.:

**STATE OF KERALA, REP. BY ITS
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.**

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 13-11-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

JV

K. RAMAKRISHNAN, J.

Crl. Appeal No.924 of 2004

Dated this the 13th day of November, 2015

JUDGMENT

Accused in S.C.No.588/1997 on the file of the Additional Sessions Court Fast Track-I, Thiruvananthapuram is the appellant herein. The appellant was charge-sheeted by the Detective Inspector, CBCID (CFS), Thiruvananthapuram in CBCID Crime No.363/CR/88 (Crime No.343/88 of Fort Police Station) for the offences under Section 489(B) and (C) of Indian Penal Code.

2. The case of the prosecution in nutshell was that on 30.07.1988, at about 1 pm, the accused was found to be in possession of 202 counterfeit currency notes of the denomination of Rs.20/- and used the same as genuine for the purpose of purchasing fish by handing over two such notes to CW-1 in Chalai market and thereby he had committed the aforesaid offences.

3. 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.87/1997. After complying

with the formalities, the case was committed to the Sessions Court, Thiruvananthapuram, where it was taken on file as S.C.No.588/1997 and it was made over to Additional Sessions Court (Fast Track-II), Thiruvananthapuram for disposal.

4. When the accused appeared before the court below, after hearing both sides, charge under Section 489 (B) and (C) of the Indian Penal Code was framed and the same was read over and explained to him and he pleaded not guilty. In order to prove the case of the prosecution, PWs. 1 to 4 were examined and Exts.P1 to P6 and MOs. 1 to 3 were marked on their side. After closure of the prosecution evidence, the accused was questioned under Section 313 of the Code of Criminal Procedure and he denied all the incriminating circumstances brought against him in the prosecution evidence. He had further stated that on 30.07.1988 during night, the Police people came alongwith a lady to his house and thereafter he was taken from the house to the Police Station and falsely implicated in the case. He was completely bedridden and he was not able to go for any work. Since the evidence in this case did not warrant an acquittal under Section 232 of the Criminal Procedure Code, the accused was called upon to enter on his defence. DWs.1 and 2 were examined and Exts.D1 to D3 were marked on his side.

After considering the evidence on record, the court below found him not guilty for the offence under Section 489 (B) of Indian Penal Code and acquitted him of that charge, but found him guilty under Section 489 (C) of Indian Penal Code and convicted him thereunder and sentenced him to undergo simple imprisonment for two years and also to pay a fine of Rupees Two thousand in default to undergo simple imprisonment for three months more. Set off was allowed for the period of detention already undergone under Section 428 of the Code of Criminal Procedure. Aggrieved by the same, the present appeal has been preferred by the appellant-accused before the court below.

5. Heard Sri Suman Chakravarthy, learned counsel appearing for the appellant and Sri Jibu P. Thomas, learned Public Prosecutor appearing for the State.

6. Learned counsel for the appellant submitted that evidence of DWs.1 and 2 coupled with Exts.D1 to D3 would show that there was no possibility of the accused moving out of the house without the help of anyone and there is no possibility for him to go to the fish market as claimed by the prosecution. Further, PW-1, the alleged independent witness did not support the case of the prosecution though he admitted the signature in Ext.P1 and according to him it was signed by him in the Police

Station. Further, there was long delay in conducting the investigation, there is no explanation forthcoming for the delay. There is no evidence to show that the accused was in possession of the alleged counterfeit notes, knowing that they are counterfeit notes with an intention or likely to use as genuine notes so as to attract the offence under Section 489 (C) of Indian Penal Code. So court below was not justified in convicting the appellant for the offence alleged. Learned counsel also submitted that if for a reason this Court found that the conviction is not liable to be interfered with, the sentence imposed is harsh as he is aged 76 years now and is undergoing treatment for several ailments. The learned counsel is relied on the decisions reported in **Umashankar v. State of Chhattisgarh [2001(3) KLT 681]** and **Abdul Rahiman v. State of Kerala [2015 (1) KLT SN 139]** Case No.168, in support of his case.

7. On the other hand, learned Public Prosecutor submitted that he was got red-handedly caught alongwith the fake currency notes and the delay has been properly explained. So, considering the nature of offence, sentence imposed cannot said to be harsh.

8. The case of the prosecution as emerged from the

prosecution witnesses was as follows: On 30.07.1988, at about 1 pm, while PW-2, the Circle Inspector of Police, Fort Police Station was doing patrol duty alongwith PW-2 and when they reached Chalai fish market, he found some commotion is going on there and when he went there, he found there was some alteration between PW-1 and the accused and when enquired, PW-1 told that the accused purchased fish and gave two fake Rs.20/- notes. On verification, he found that it was fake notes and thereafter, he examined the body of the accused and found that he was having five bundles of such notes which were found to be fake notes and they were totalling a number of 200 notes. He had seized the same as per Ext.P1 mahazar in the presence of PW. 1 and one Mahim and arrested the accused and came to the Police Station and registered a suo motu case against the accused as per Ext.P4 First Information Report as Crime No.343/1988 of Fort Police Station under Section 489 (B) and (C) of Indian Penal Code. Thereafter, he produced the accused before court alongwith remand report and entrusted the case to CBCID, CFS unit, Thiruvananthapuram for further investigation. The investigation in this case was undertaken by CW-5 who filed Ext.P5 report regarding taking over investigation. Thereafter, the investigation was conducted by PW-4. He questioned the

witnesses and recorded their statements. The case was re-registered as CBCID Crime No.363/CR/88 of Thiruvananthapuram unit under Section 489 (B) and (C) of Indian Penal Code. He sent the fake notes for examination to Bank Note Press and Ext.P6 report was obtained. Thereafter, the further investigation in this case was conducted by CW-7 who completed the investigation and submitted final report.

9. PW-1 though admitted his signature in Ext.P1, he had denied having seen the actual seizure. But he had admitted in his evidence that he had signed Ext.P1 for proving seizure of Rs.20/- fake notes. He had also submitted in his chief examination that the accused was taken by the Police from the fish market. He had also admitted that apart from himself, one Mahim, who is conducting fish business in Chalai market and signed Ext.P1 mahazar and said Mahim is no more. Though in the cross-examination of the accused, he had stated that he signed the document from Fort Police station and he knew the accused. So his evidence will go to show that he is now trying to help the accused and that was the reason why he trying to give a deviation from what he had stated in his chief examination though he declared hostile as he did not support the case of the prosecution completely.

10. PW-3 is the detecting officer and PW-2 is the person who accompanied him. PW-4 had categorically stated that he was doing patrol duty in connection with another crime along with PW-2 and when he reached the Chalai market, he heard some commotion inside the market. When he went inside, he found that there was some altercation going on between PW-1 and the persons gathered there with the accused and when he enquired, it was revealed that the accused had given two Rs.20/- notes which were found to be fake and he had examined the body of the accused and found that he was having a bundle of notes covered with MO.3 plain paper. On examination he found that MO.2 series fake currency notes of 200 in number of Rs.20/- denomination was found in that bundle. He had seized MO.1 series two fake notes taken from PW-1 and MO.2 series and MO.3 paper as per Ext.P1 mahazar. He arrested the accused and came to the Police Station and suo motu registered the case. The evidence given by PW-3 on this aspect was corroborated by the evidence of PW-2. They have denied the suggestion that he was taken from the house and after going to house along with a lady who found in possession of fake note from Chalai fish market and falsely implicated in the case.

11. DW-2 was examined on the side of the accused to

prove that the accused was taken from his house at Anayara. A reading of this evidence will go to show that there is no possibility for him to reside there and there is contradictions in his evidence regarding his acquaintance with the accused and he had come to court as requested by the son of the accused and he was not aware what purpose he had summoned as well. So under the circumstances, court below was perfectly justified in rejecting the evidence of PW-1 to prove false implication as claimed by the defence.

12. DW-1 doctor was examined to prove that the accused is suffering from disc-prolapse and it is not possible for him to move without the help of others. But it will be seen from the documents produced that one of the certificates was issued dated 01.08.1988 and he was in judicial custody at that time and there was no possibility for him to go and meet the doctor to get a certificate of that nature. Further, DW-1 had admitted that he may not be able to identify the accused as the person who was treated by him and the documents related to that person. Further, no complaint was filed by the accused regarding his claim of false implication as well. So under the circumstances, court below was perfectly justified in relying on the evidence of PWs.2 and 3 and coming to the conclusion that the accused was

arrested alongwith 202 fake currency notes of Rs.20/- denominations.

13. Further, Ext.P6 report shows that it is fake currency note. The evidence of PW-4 will go to show that they were awaiting for the report of the expert on this aspect and Ext.P4 will go to show that it was issued only in the year 1994. So it cannot be said that there was undue delay in conducting the investigation as claimed by the defence. Further, they also deposed that when the accused was questioned, it was revealed that the currency notes were given to him by one Gopalakrishnan, and they were trying to trace out his whereabouts and they could not succeed in that attempt and that was the reason for the delay as well. So delay has been properly explained in this case. The other investigating officers could not be examined as they were no more. So from the totality of the evidence, it can be safely concluded that the prosecution was able to prove that the accused was found to be in possession of fake currency notes.

14. It is true that in the decision reported in **Umashankar's case** (supra) it has been observed that in the absence of any mens rea, the accused cannot be convicted for the offence under Section 489 (C) of Indian Penal Code. But a

reading of the judgment will go to show that if the accused was found to be in possession of fake notes and he is not able to give any explanation for the same, then it can be inferred that he had knowledge about the same as it is very difficult to prove the mens rea by direct evidence. This was followed by this Court in the decision reported in **Abdul Rahiman's case** (supra) which was relied on by the counsel for the appellant. Accused has no explanation as to how he came into possession of such huge quantity of counterfeit currency notes. So under the circumstances, it can only be inferred from the circumstances that he was found to be in possession of counterfeit notes knowing that it is counterfeit notes and is likely to use as genuine notes. So court below was perfectly justified in convicting the appellant for the offence under Section 489 (C) of Indian Penal Code and that finding does not call for interference.

15. The counsel for the appellant submitted that the sentence imposed is harsh. Court below sentenced the appellant to undergo simple imprisonment for two years and also to pay a fine of Rupees Two thousand in default to undergo simple imprisonment for three months more. It is true that the offence dealing with counterfeit notes is a grave offence affecting the revenue. But, going by the scheme of the Chapter dealing with

fake currency notes, offence under Section 489 (C) of Indian Penal Code is found to be a lesser offence when compared to other offences mentioned in this Chapter. Further it is not compulsory as well to avoid incarceration as sentenced in the case. But at the same time, it is also seen from the judgment that the accused was aged 64 years at the time when he was facing the trial and now he could be more than 75 years. However, the documents produced also shows that he is suffering from serious ailments as well. Considering these aspects, this Court feels that some leniency can be shown in imposing the sentence. So reducing the substantive sentence to a minimum and increasing the fine with default sentence will be sufficient and that will meet the ends fo justice. So sentence imposed by the court below is set aside and the sentence is modified as follows: The appellant is sentenced to undergo simple imprisonment for two months and also to pay a fine of Rupees Ten thousand in default to undergo simple imprisonment for one month more. Set off is allowed for the period of detention already undergone.

In the result, the appeal is allowed in part. Order of conviction passed by the court below against the appellant under Section 489(C) of Indian Penal Code is hereby confirmed. But

the sentence imposed by the court below is set aside and the same is modified as follows:

The appellant is sentenced to undergo simple imprisonment for two months and also to pay a fine of Rupees Ten thousand and in default to undergo simple imprisonment for one month more. Set off is allowed for the period of detention already undergone. With the above modification of sentence alone, the appeal is allowed in part and disposed of accordingly.

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

JV

sd/-
K. RAMAKRISHNAN,
JUDGE