

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 18TH DAY OF DECEMBER 2015/27TH AGRAHAYANA,  
1937

CRL.A.No. 600 of 2007  
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AGAINST THE JUDGMENT IN SC 167/2006 of ADDL. DISTRICT &  
SESSIONS COURT (ADHOC)-II, MANJERI.

APPELLANT(S)/ACCUSED:  
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A.V.ALI, S/O. ABDULLAKUTTY,  
AMMAM VEETIL HOUSE, MUNNIYOOR,  
MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENT(S)/STATE:  
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THE STATE OF KERALA, REPRESENTED BY  
THE SUB INSPECTOR OF POLICE,  
THIROORANGADI POLICE STATION - THROUGH  
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,  
ERNAKULAM, KOCHI-31.

BY GOVERNMENT PLEADER SMT. LILLY LESLIE

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON  
18-12-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

P. BHAVADASAN, J.

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Crl.Appeal. No. 600 of 2007  
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Dated this the 18<sup>th</sup> day of December, 2015.

JUDGMENT

Four persons faced prosecution for the offence punishable under Section 489C of the Indian Penal Code. Among them, the appellant herein, who is the original third accused, was not available when the case was taken up for trial initially and therefore his case was split up and renumbered. The trial proceeded against the rest of the three persons and that ended in acquittal of all the three. Later when the appellant appeared, his case was renumbered as S.C. 167 of 2006 and trial proceeded against him. He was found guilty. He was therefore convicted and sentenced to undergo rigorous imprisonment for two years.

2. The prosecution case is that on the date of the incident, i.e., 4.1.2001, while P.W.1 and his team of officers were on patrol duty, they got reliable information that before the shop of P.W.3 a person, who was found dealing with

counterfeit currency note, was detained by people. That led P.W.1 and his team of officers to the place. The allegation is that after purchasing a packet of cigarette, the accused before this Court passed on a 100 rupee note which was found to be a counterfeit note. The accused had a case that he got it from the first accused. The first accused in turn said that he got it from the second accused and the second accused in turn said that he had got it from the fourth accused. Search of the house of the first accused resulted in seizure of five counterfeit notes of Rs.100/-. The specific stand of the accused was that he received the notes from the first accused.

3. In the final report filed by the police under Section 173(2) Cr.P.C., the allegation was that the accused had committed the offence under Sections 489B and 489C of I.P.C. But the court framed charge under Section 489C of I.P.C. As already observed, accused Nos. 1, 2 and 4 stood trial initially and all of them were acquitted. The accused, who faced trial

subsequently, was less fortunate and he suffered conviction.

4. The trial court mainly relied on the evidence of P.W.3 to come to the conclusion that the accused was well aware that the note was a forged one and he attempted to use it as genuine and that is sufficient to create criminal liability on the third accused. Holding so, the appellant was convicted and sentenced as already mentioned.

5. Learned counsel appearing for the appellant contended that in order to attract Section 489C of I.P.C. certain ingredients will have to be established by the prosecution. Referring to the evidence of P.Ws. 1, 3 and 4, it was contended that even assuming all what they say are true, there is no material to show that any of the ingredients necessary to attract Section 489C I.P.C. have been made out. Further, learned counsel pointed out that the court below seems to have placed reliance on the evidence of P.W.3 to come to the conclusion that the accused had the intention to

use the counterfeit note as genuine one. Learned counsel referring to the evidence of P.W.3 said that it cannot be relied on at all. Though in chief examination he favours the prosecution, in cross-examination, he deposed just opposite of what he has deposed in chief examination. Such a witness can be characterized only as unreliable and it was not correct on the part of the court below to place implicit faith on the evidence of such a witness. Apart from the fact that the prosecution has failed to establish that the accused in this case was in possession of the counterfeit note knowing it to be counterfeit note or reason to believe that it is counterfeit note, there is absolutely no evidence to show that he had used it as a genuine note or he has the intention to use it as a genuine note. The court below has misdirected itself in convicting the accused.

6. Learned Public Prosecutor attempted to sustain the conviction on the basis of the evidence of P.Ws. 1 and 3.

That the accused attempted to buy a packet of cigarette and pass on the note in question is not in dispute. If that be so, according to the learned Public Prosecutor, the intention to use it as genuine is very evident. That alone has been relied on by the court below and there is no reason to doubt that finding of the court below. In short the case is that there are no grounds made out to interfere with the finding of the court below.

7. To understand the true scope and purport of the issue involved in this proceedings, it is useful to refer to Section 489C of I.P.C. It reads as follows:

“489C. Possession of forged or counterfeit currency–notes or bank–notes.– Whoever has in his possession any forged or counterfeit currency–note or bank–note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to

seven years, or with fine, or with both.”

It consists of two limbs, they are (i) a person is in possession of a forged or counterfeit currency note or bank note, knowing it or having reason to believe it to be forged or counterfeit note and (ii) intending to use it as genuine or it may be used as genuine.

8. Requirements of the section are very evident from a plain reading of the provision itself. Mere possession of forged or counterfeit note by itself cannot make out an offence under Section 489C. The person, from whom it is recovered, must have the knowledge that it is counterfeit note or has the reason to believe that it is counterfeit note. Even assuming that those aspects are proved, the matter does not end there. The prosecution has to further prove that those counterfeit notes were intended to be used as genuine notes or used as genuine notes. The burden to prove these are always on the prosecution. The prosecution has to establish

it by adducing satisfactory evidence.

9. Bearing the above principles in mind, an attempt shall now be made to look into the evidence in this case. P.W.1 is the detecting officer. His evidence is only to the effect that while he and his team of officers were on patrol duty, they got reliable information that in front of the shop of P.W.3 a person was dealing in counterfeit note. They reached the place and the accused were arrested. He discloses that he received it from the first accused and the first accused was arrested and search of his body yielded five notes out of which one is seen identical to the one which was seized from the accused in this case. The first accused in turn stated that he had received it from the second accused and the second accused in turn stated that he received it from the fourth accused. Though the decision acquitting accused Nos. 1, 2 and 4 are not before this Court, this Court is given to understand that even though there was recovery from the first

accused, since no crime has been registered at that point of time, the confession given by the third accused should not be used against accused Nos. 1, 2 and 4. It is strange to note that there is no actual recovery from him. Be that as it may, we are now concerned with the evidence in this case.

10. That two notes were recovered from the possession of the accused cannot be disputed. The prosecution has no case that the accused had more than two notes. If one goes through the evidence of P.W.1, after having purchased the cigarette, the counterfeit note should have been in the possession of P.W.3. It could not have come back to the accused. Leaving it there, we should go to the next question.

11. The court below placed implicit faith and reliance on the evidence of P.W.3 to come to the conclusion that the note which the third accused gave to him was intended by the third accused as a genuine one. Here one must remember that prior to that evidence, there should be

evidence to show that the third accused had the notes knowing or believing it to be counterfeit notes. There is no such evidence at all. Further, the evidence of P.W.3 is interesting. Though he stands for the prosecution in chief examination, he makes a deviation in cross examination and he disowned almost all the statements in the chief examination. It is extremely difficult to understand how reliance could be placed on the evidence of such a witness who has no consistent stand. In cross examination he completely reversed his statement in chief examination. To indicate one of those aspects, he in cross examination says that he was not in the shop when the incident occurred, and he did not receive the counterfeit note also. What he says was that when he reached after some time, he found the accused having been detained by a few people. If that be so, the second limb of Section 489C is conspicuously absent in the case on hand, i.e., the intention to use it as genuine or used as

a genuine note. The court below was not justified in drawing inspiration from the evidence of P.W.3 which is unworthy of credit in view of his changing stand at the time of chief and cross examination. That means, the necessary ingredients to constitute Section 487C are conspicuously absent.

For the above reason, this Court is unable to uphold the finding of the court below that the accused in this case is guilty of the offence under Section 489C of I.P.C. The conviction and sentence are set aside and it is held that the prosecution has not been able to establish the case against the accused beyond reasonable doubt. The accused stands acquitted. His bail bond shall stand cancelled and he is set at liberty.

P. BHAVADASAN,  
JUDGE

sb.