

Bail Slip

The Appellant Viz.K.Muthusuthanan was directed to be released on bail as per order of this court in MP No.1 of 2008 in CrI.A.No.499/2008, dated 08.07.2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.499 of 2008
and M.P.No.1 of 2008

K.Mathusuthanan ... Appellant/Accused

vs.

State by
Inspector of Police
CBCID CC Wing
Chennai

...Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, 1973 against the judgment dated 02.07.2008 made in S.C.No.390 of 2007 on the file of IV Additional Sessions Court, Chennai.

For appellant : Mr.C.D.Johnson

For respondent : Mr.P.Govindarajan,
Addl.Public Prosecutor

JUDGMENT

The conviction and sentence dated 02.07.2008 passed in Sessions Case No.390 of 2007 by the IV Additional Sessions Court, Chennai, are being challenged in the present Criminal Appeal.

2. The case of the prosecution is that on 16.07.2001, at about 5 p.m., in Venkata Narayana Road, Thiyagaraya Nagar, Chennai, the accused is found in possession of 80 Hundred Rupees fake notes and in pursuance of his confession, 459 Hundred

Rupees fake notes have been recovered. After occurrence, P.W.1 has given a special report to CBCID and the same has been registered in Crime No.4/2001 and subsequently, Investigating Officer viz., P.W.5 has conducted investigation. After his transfer, P.W.6 has conducted investigation and after completing the same, laid a final report on the file of the Additional Chief Metropolitan Magistrate Court, Egmore, Chennai, and the same has been taken on file in Calendar Case No.7905 of 2003.

3. The Additional Chief Metropolitan Magistrate Court, Egmore, Chennai, after considering the facts that the offences alleged to have been committed by the accused are triable by sessions court has committed the case to the court of sessions and the same has been taken on file in Sessions Case No.390 of 2007 and subsequently, committed to the trial court.

4. The trial court, after hearing arguments of both sides and upon perusing relevant records has framed the 1st charge against accused under Section 489B; 2nd charge against him under Section 489C of the Indian Penal Code (hereinafter called as "IPC") and the same have been read over and explained to him. The accused has denied the charges and claimed to be tried.

5. On the side of the prosecution, P.Ws.1 to 6 have been examined and Exhibits P.1 to P.7 and Material Objects 1 to 3 have been marked.

6. When the accused has been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. No oral and documentary evidence have been adduced on the side of the accused.

7. The trial court, after hearing arguments of both sides and upon perusing the relevant evidence, has found the accused guilty under Section 489C and sentenced him to undergo five years rigorous imprisonment and also imposed a fine of Rs.10,000/- with usual default clause. The trial court has acquitted him in respect of the charge framed against him under Section 489B of the IPC. Against the conviction and sentence passed by the trial court, the present Criminal Appeal has been preferred at the instance of the appellant/accused.

8. The learned counsel appearing for the appellant/accused has contended that the trial court has acquitted the accused in respect of the 1st charge framed against him under Section 489B of the IPC whereas in respect of the 2nd charge, absolutely there is no evidence except the evidence given by P.W.2 and therefore, the conviction and sentence passed by the trial court in respect

of the 2nd charge is totally illegal and the same are liable to be set aside.

9. The learned Additional Public Prosecutor has contended that on the date of occurrence, the accused has given a voluntary confession statement and in pursuance of the same, the accused has taken the Investigating Officer to his house from where he produced 459 Hundred Rupees fake notes. Under the said circumstances, the trial court has rightly found him guilty in respect of the 2nd charge and therefore, the conviction and sentence passed by the trial court in respect of the 2nd charge against the accused is not liable to be set aside.

10. It is an admitted fact that the trial court has acquitted the accused in respect of the 1st charge framed under Section 489B of the IPC. The 2nd charge is that on the date of occurrence, the accused has kept 459 Hundred Rupees fake notes in his house.

11. The 2nd charge is based upon the confession alleged to have been given by the accused. In fact, the confession statement alleged to have been given by the accused has not been sent to court. At this juncture, the court has to analyse as to whether the evidence given by one Jothi (P.W.2) can be relied upon.

12. The specific evidence given by P.W.2 is that in the place of occurrence, the accused has been found in possession of 80 Hundred Rupees fake notes and in pursuance of his confession, he has taken him and others to his house where he produced 459 Hundred Rupees fake notes. It has already been pointed out that the confession alleged to have been given by the accused has not been sent to court. The evidence given by P.W.2 is mainly based upon the alleged confession given by the accused, recovery is in pursuance of the same. Since the said aspects have not been established on the side of the prosecution, the evidence of P.W.2 cannot be a sole basis for coming to a conclusion that the accused has given a confession and in pursuance of the same, recovery has been made in respect of 459 Hundred Rupees fake notes. Therefore, it is quite clear even for proving the 2nd charge, sufficient materials are not at all available on the side of the prosecution. Since the vital document of confession alleged to have been given by the accused has not been filed in the court, the role alleged to have been played by P.W.2 cannot be believed in.

13. The trial court, without considering the above lapses on the side of the prosecution has erroneously found the accused guilty in respect of the 2nd charge framed under Section 489C of

the IPC. In view of the discussion made earlier, this court has found considerable force in the contentions put forth on the side of the appellant and altogether, the criminal appeal is liable to be allowed.

In fine, this Criminal Appeal is allowed. The conviction and sentence passed in Sessions Case No.390/2007 by the trial court are set aside. The appellant/accused is acquitted. Bail bonds, if any executed by him shall stand cancelled. Fine amounts, if any paid by him are ordered to be refunded forthwith. Consequently, connected M.P.No.1 of 2008 is closed.

Sd/-
Assistant Registrar (CS-II)

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Sub Assistant Registrar

nvsri

To

- 1.The Additional Sessions Judge, Chennai.
 - 2.-do-Thro'The Principal Sessions Judge, Chennai.
 3. The Superintendent, Central Prison, Puzhal, Chennai.
 - 4.The Inspector of Police, CBCID CC Wing, Chennai.
 5. The Public Prosecutor, High Court, Chennai.
- +1 cc to Mr.C.D.Johnson, Advocate, sr.67180

Crl.A.No.499 of 2008

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