

BAIL SLIP

The Appellant/Accused viz., Aruchamy @ Arumugham was directed to be released on bail in and by the order of this Court dated 17.10.2006 made in CrI.M.P.No.1 of 2006 in CrI.A.No.866 of 2006.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2015

CORAM:

THE HONOURABLE MS. JUSTICE R. MALA

Criminal Appeal No.866 of 2006

Aruchamy @ Arumugham .. Appellant/Accused

v.

The State Rep. By
The Inspector of Police
Palladam Police station
Palladam
Coimbatore District.
Cr.No.805 of 2002.

.. Respondent/Respondent

Prayer: Criminal Appeal filed under Section 374 of Cr.P.C., against the judgment of conviction and sentence dated 29.09.2006, made in S.C.No.179 of 2006 on the file of the learned Additional Sessions Judge, Fast Tract Court No.4, Coimbatore at Thiruppur.

For Appellant : Mr.S.N.Arun Kumar
for Mr.C.Ram Kumar

For Respondent : Mr.V.Arul
Government Advocate (crl.side)

J U D G M E N T

The criminal appeal arises out of the judgment of conviction and sentence, dated 29.09.2006 made in S.C.No.179 of 2006 on the file of the learned Additional Sessions Judge, Fast Tract Court No.4,

Coimbatore at Thiruppur, whereby the appellant/accused convicted for the offence under Section 489-C IPC and sentenced to undergo three years rigorous imprisonment. Against which, the present appeal has been filed.

2.The case of the prosecution is as follows:

(i) On the side of the prosecution, P.W.1 to P.W.7 were examined; Exs.P.1 to P.4 and M.O.1 was marked.

(ii) On 20.12.2002 at about 10.30 a.m., P.W.1/Manickam, Inspector, Coimbatore District Q Branch Crime Investigation Department, on the basis of information received went to Palladam Bus Stand and then to Pollachi Bypass Road at about 100 meters in South along with P.W.4/Rajeshkumar, Sub-Inspector of Police, Ravikumar, Sub-Inspector of Police, P.W.3/Gunasekaran, Head Constable and P.W.2/Kannan, Head Constable and involved in inspection relating to Q Branch. At that time, the appellant/accused, namely, Aruchamy @ Arumugham, was roaming in a suspicious manner. Hence, P.W.1/Manickam investigated him and the appellant/accused confessed that he was in possession of counterfeit currency, namely, 95 notes of 100 denomination. Then P.W.1/Manickam seized the counterfeit currency from the appellant/accused. Since the public are not willing for witness, P.W.1/Manickam seized the counterfeit currency, M.O.1, in the presence of witnesses P.W.4/Rajesh, Sub-Inspector of Police and Ravikumar, Sub-Inspector of Police and obtained their signature. Thereafter, P.W.1/Manickam prepared the Special Report/Ex.P.1 and handed over the appellant/accused along with the seized counterfeit currency to P.W.6/Shagul Hameed, Inspector of Police, Palladam Police Station.

(iii) P.W.6/Shagul Hameed, Inspector of Police, Palladam Police Station, on receiving the Special Report/Ex.P.1 from P.W.1/Manickam on 20.11.2002 registered a case in Crime No.805 of 2002 under Section 489C IPC and prepared the printed FIR/Ex.P.3 Then, he examined the witnesses, P.W.1/Manickam, Inspector of Police, Coimbatore District Q Branch Crime Investigation Department, P.W.4/Rajesh, Sub-Inspector of Police, Ravikumar/Sub-Inspector of Police, P.W.2/Kannan, Head Constable, P.W.3/Gunasekaran, Head Constable and recorded their statement. Then, he received the counterfeit currency/M.O.1 from P.W.1, which was seized by P.W.1 from the appellant/accused, and prepared the Seizure Mahazar/Ex.P.2. Then, P.W.6/Shagul Hameed, Inspector of Police, Palladam Police Station sent a requisition to the Judicial Magistrate for sending the counterfeit currency/M.O.1 to Government Press at Nasik for phenolphthalein test. Then, he received the report from Nasik, which is marked as Ex.P.4.

Thereafter, P.W.6 got transferred from Palladam Police Station.

(iv) P.W.7/Arumugam, Inspector of Police, Palladam Police Station, took up the case for further investigation. Then, he showed the seized currency/M.O.1 to P.W.5/Palanisamy, the then Cashier, State Bank of India and recorded his statement. Thereafter, P.W.7 examining one Vaidhyalingam, Assistant Manager, State Bank of India and recorded his statement.

(v) After completing the investigation, P.W.7/Arumugam, Inspector of Police, Palladam Police Station filed the charge sheet against the accused under Section 489C IPC.

3.The Trial Court placed the incriminating evidence before the accused under Section 313 of Cr.P.C. and the accused denied the same in toto. On the side of the defence, no oral evidence was examined and no documentary evidence was marked. After considering the oral and documentary evidence, the trial Court convicted the Accused for the offence under Section 489C IPC and sentenced them as stated above. Aggrieved over the same, the accused/appellant has preferred this appeal.

4.Challenging the conviction and sentence passed by the trial Court under Section 489 IPC, the present appeal has been preferred by the accused/the appellant herein.

5.The learned counsel appearing for the appellant/accused raised the following two points, namely:

- (1)The Trial Court has failed to consider that even though the appellant was in possession of counterfeit currency, he was not in conscious possession of the same that it is a counterfeit currency.
- (2)The Author of the report/Ex.P.4 has not been examined before the Trial Court and hence, no relevance cannot laid upon the same.

The learned counsel appearing for the appellant also relied upon the following decisions to substantiate the case:

- (1)2001 (2) MWN (Cr.) 260 (Arumugam vs. State by Sub-Inspector of Police, Uttukkuli Police Station, Erode District)
- (2)2010 (9) SCC 286 (Keshav Dutt vs. State of Haryana)

6.Resisting the same, the learned Government Advocate (Crl. Side) would submit that the appellant/accused himself has admitted that M.O.1 is a counterfeit currency. In such circumstances, examination of the Author of the report/Ex.P.4 is immaterial. He would further submit that M.O.1 seized from the appellant has been sent to Nasik for verification and report has been received and it

was specifically mentioned that it is a counterfeit currency and that has not been disputed. He would further submit that the decisions relied upon by the learned counsel appearing for the appellant is not applicable to the facts of the present case. Hence, he prayed for dismissal of the appeal.

7. Considered the rival submissions made on both sides and perused the typed set of papers.

8. The point to be decided is that whether the report/Ex.P.1 has been taken into consideration? It is true that all the witnesses are Police officials and there is no independent witness. The reason assigned is that even though the appellant was intercepted and M.O.1 was recovered, no independent witness are willing for witness and hence, the Police Officials, namely, Head Constable and Sub-Inspector of Police who accompanied P.W.1 has attested the Seizure Mahazar/Ex.P.2. That factum has been proved by the prosecution beyond all reasonable doubt.

9. Now, the Court has to decided that whether M.O.1 is a counterfeit currency.

10. To prove the same, P.W.5/Palanisamy, Senior Assistant Manager, State Bank of India has deposed that he has verified the same in the Machine which was provided in the Bank whether it is a counterfeit currency. On that basis, he has given a report and then only, charge sheet has been filed by P.W.7. There is no reason for discarding the evidence of P.W.5. So, the prosecution has proved that M.O.1 is counterfeit currency by way of examining P.W.5.

11. It is true that even though the report/Ex.P.4 from Nasik has been marked through P.W.6/Shagul Hameed, but to prove the same, the Author of the report/Ex.P.4 has not been examined. In such circumstances, it is appropriate to consider the decision relied upon by the learned counsel appearing for the appellant reported in 2001 (2) MWN (Cr.) 260, wherein, it is stated that the document could not be marked through the Investigating Officer, but have to be marked through the Person who prepared the same. But, in the present case, admittedly the document is a public document and Ex.P.4 has been confirmed by P.W.5. Furthermore at the time of marking Ex.P.4 no objection was made. Hence, the above citation is not applicable to the facts of the present case.

12. Further, the learned counsel appearing for the appellant relied upon the decision reported in 2010 (9) SCC 286, wherein it is stated that non-examination of hand writing expert is fatal to the case of the prosecution. Admittedly, in the present case,

M.O.1/counterfeit currency has been seized from the appellant and the prosecution has proved that it is counterfeit currency by way of examining P.W.5 and by marking Ex.P.4. So, the non-examination of the Author of the report is not fatal to the case of the prosecution. Hence, the above citation is not applicable to the facts of the present case.

13.Now, the Court has to decide whether the prosecution has proved that the appellant was in conscious possession of the counterfeit currency.

14.The learned counsel appearing for the appellant would submit that the appellant has given explanation that the amount has been given by one Ganesan and he was not aware of the nature of the currency. But, on perusal of Section 313 Cr.P.C. question, it is seen that the appellant has not stated anything. Furthermore, in the cross-examination also, the appellant has not stated anything that the amount was given by one Ganesan and he is not aware of the fact that it is a counterfeit currency. Further, a suggestion was posed to him that there is enmity between P.W.1 and the appellant in respect of oral altercation and so, P.W.1 has taken a revenge and foisted a false case against him. The appellant has not taken any specific stand as to he was not in possession of the property, but he has stated that it was given by one Ganesan and at the later point of time, he has stated that false case has been foisted against him in view of the enmity between the appellant and P.W.1.

15.In such circumstances, the prosecution case is that on 20.12.2002 at 10.30 a.m, when the appellant was intercepted, he was in possession of 95 notes of Rs.100 denomination and all are counterfeit currency and that has been seized. Even though, the appellant has stated that it was given by one Ganesan and offered explanation that he is not aware of the fact that it is a counterfeit currency, the same does not merit any acceptance. Hence, I am of the view that the Trial Court has considered all the aspects in proper perspective and came to the correct conclusion and convicted the appellant/accused under Section 489C IPC.

16.With regard to the quantum of sentence, the learned counsel appearing for the appellant would submit that the appellant is not having any bad antecedent and he is in prison for 45 days. Hence, this Court is inclined to reduce the sentence from three years rigorous imprisonment to one year rigorous imprisonment.

17.In fine,

(i) The Criminal Appeal is dismissed.

(ii) Judgment of conviction passed by the trial Court under Section 489C IPC is hereby confirmed. Sentence alone has been reduced from "three years rigorous imprisonment" to "one year rigorous imprisonment."

(iii) Bail bond, if any executed by the appellants/accused shall stand cancelled.

(iv) The trial Court is directed to secure the custody of the appellant/accused to undergo the remaining period of sentence.

Sd/-

Assistant Registrar

//True Copy//

• Sub Assistant Registrar

cse

To

1. Additional Sessions Judge,
Fast Tract Court No.4, Coimbatore at Thiruppur
2. The Inspector of Police
Palladam Police station
Palladam, Coimbatore District.
3. The Public Prosecutor
High Court, Madras.
4. The Section Officer,
Criminal Section, High Court, Madras.
5. The Principal Sessions Judge, Coimbatore
6. The District Munsif cum Judicial Magistrate, Palladam
7. The Chief Judicial Magistrate, Coimbatore.

Criminal Appeal No.866 of 2006

gp(co)
pmk..27.2.2015