

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

**CRIMINAL REVISION CASE Nos.351, 352, 353, 355 &
442 of 2007**

COMMON ORDER:

In all these Criminal Revision Cases common facts and common question of law are involved and hence they are disposed of by this common order.

2. The case of the prosecution is that basing on a complaint of PW 1, the Station House Officer, Palakol registered a case in Cr.No.38/2001 under Section 489-A IPC against A1. In the complaint, it is alleged that on 04.04.2001 A1 tendered Rs.100/- fake note to purchase fish and on suspicion when PW 1 and others tried to catch hold of A1, he escaped. During investigation, it was found that A1 to A23 are involved in the crime. The accused belong to different places in West Godavari District and in East Godavari District. They are members of fake notes gang operating in and around the Districts. The object of the gang is to circulate counterfeit currency notes among public. A4 to A7 are the main persons dealing with fake notes business. A4 was operating printer-cum-scanner to prepare fake notes and A6 provided shelter for keeping the equipment for manufacturing fake notes. The remaining accused were circulating the fake notes in the public. After investigation, the Inspector of Police, Palakol altered the section of law into under Sections 489B, 489C, 489D and 420 IPC.

3. The concerned Magistrate split up the case against A3, A18 and A19 as PRC.No.20/2004 since they were absconding from the beginning, and committed the case against the remaining accused in PRC No.33/2001 to the Sessions Court, which was made over and registered as SC.No.176/2004 on the file of the Assistant Sessions Judge, Narsapur. The accused were examined and charges under

sections 420, 489B, 489C and 489-D of IPC have been framed against them, for which, they pleaded not guilty.

4. During course of trial, the case against A12 is abated as he died.

5. To bring home the guilt of the accused, the prosecution examined PWs 1 to 11 and produced Exs.P1 to P14 and MOs.1 to 70.

After closure of the evidence, the accused were examined under Section 313 Cr.P.C and they denied the material evidence. On behalf of accused no defence was adduced.

6. On appreciation of oral and documentary evidence, the learned trial Court found A9, A11, A17 to A22 not guilty of the offence under section 489B, 489C, 489D and 420 IPC and acquitted them.

7. The learned trial Court found A1, A2, A4 to A8, A10, A13 to A16 and A23 not guilty of the offence under section 489B, 489D and 420 IPC, however, found them guilty of the offence under section 489C IPC, convicted and sentenced A1, A2, A4 to A8, A10, A13 to A16 and A23 to undergo rigorous imprisonment for three years and to pay fine of Rs.1,000/- each, in default to suffer simple imprisonment for three months each.

8. Challenging the conviction and sentence passed by the trial Court, A1, A4 to A8, A10 & A23 filed CrI.A.No.69/2006, A15 & A16 filed CrI.A.No.70/2006, A14 filed CrI.A.No.68/2006, and A13 filed CrI.A.No.71/2006 all on the file of VI Additional District & Sessions Judge (FTC), Narsapur. The appellate court on re-appreciation of the evidence on record, delivered four separate judgments in the four separate appeals on 07.03.2007. The appellate Court dismissed Criminal Appeal Nos.70/2006, 68/2006 and 71/2006, however, allowed CrI.A.No.69/2006 in part, setting aside conviction and sentence recorded against A10 & A23 while confirming the conviction and sentence recorded against A1, A4, A5 to A8.

9. Aggrieved by the same, A1, A4, A7 & A8 filed

Crl.RC.No.351/2007, A5 & A6 filed Crl.RC.No.352/2007, A15 & A16 filed Crl.RC.No.353/2007, A14 filed Crl.RC.No.355/2007 and A13 filed Crl.RC.No.442/2007.

10. The learned counsel for the petitioners submit that both the Courts below have failed to take into consideration the fact that all the independent witnesses, including the complainant/PW 1 and PWs 2 and 3 turned hostile and did not support the case of the prosecution. It is further submitted that only on the basis of the confession said to have been made by one accused, the other accused have been implicated which is unsustainable. Reliance is placed upon by both the Courts below on the testimony of PWs 4 and 6 who are the official witnesses and their evidence creates lot of doubt for having acted as Panch witnesses. It is further submitted that neither the so called official witnesses i.e. PWs 4 and 6 nor the investigating officers who have effected the arrest of the accused have identified the persons standing in the dock as the persons who have been apprehended by them and from whom counterfeit currency notes are seized. The learned counsel therefore submits that the present petitioners who are A1, A4 to A8, A13 to A16 are also entitled to acquittal as the other remaining 11 accused have been given the benefit of doubt by the Courts below. Originally there are as many as 23 accused persons, all of them were tried in the same Sessions Case. Based on the evidence on record, as stated above, A9, A11, A17, A20, A21 and A22, A3, A18 and A19 have been acquitted by the trial Court, whereas A10 and A23 have been acquitted by the appellate Court. A12 died during pendency of the case and hence the case against him was abated. On the basis of same evidence when the benefit of doubt was given to 11 accused, convicting the other 10 accused on the same evidence is improper and erroneous and therefore, the Courts below ought to have acquitted them as well.

11. On the other hand, the learned Additional Public Prosecutor

submits that the evidence of the material witnesses on record has been meticulously appreciated by both the Courts below and the petitioners have been convicted and since the judgments are based on proper appreciation of material on record, the same do not warrant any interference by the revisional Court.

12. The point that arises for consideration in all these revisions is whether the conviction and sentence imposed by the Courts below against A1, A4 to A8, A13 to A16 is legal and sustainable or whether it needs to be set aside or require any modification.

Point:

13. The criminal law was set in motion by a fisher woman who was examined as PW 1. On 04.04.2001 when she was selling fish at Palakol, A1 is alleged to have gone to her and gave Rs.100/- note for purchasing fish and since PW 1 suspected the genuineness of the said note, she alerted PWs 2 and 3 and when three of them tried to apprehend A1, he escaped from there. A complaint to that effect was lodged by PW 1 at about 1.30 p.m on 04.04.2001, which is Ex.P12. On the basis of such vital information, the investigating officers viz., PWs 10 and 11 have commenced the investigation after issuing First Information Report. A1 was unknown to PW 1. He was a stranger. Therefore, he has not been named in the complaint Ex.P12. No specific marks of identification or physical features were given by PW 1 or for that matter PWs 2 and 3 to the police. PWs 1 to 3 have turned hostile during course of trial and the specific case of PW 1 is that on the said date there was a quarrel in between her and another woman, who came to purchase fish, and in the meantime, the police arrived and obtained her thumb impression and no such incident of any attempt being made by somebody to give her Rs.100/- fake currency note, as alleged by the prosecution. Therefore, the very foundation of the prosecution is shaken in view of the evidence of PWs 1 to 3.

14. Be that as it may, the police officers claimed to have

apprehended A1 at about 10 p.m. on the same day at Poolapalli village, near Sandhya Marian Centre and from his possession fake currency notes of about Rs.1500/- were seized. The investigating agency is conspicuously silent as to on what basis they apprehended A1 and connected him with the complaint Ex.P12, lodged by PW 1.

15. The main stay of the case of the prosecution is the evidence of PWs 4, 6 and PW 11 the Inspector of Police, on the basis of which the Courts below have found the petitioners guilty of the offences alleged against them.

16. Before proceeding to discuss their evidence, it may be trite to place on record the required procedure to be followed by of a police officer as contemplated under section 100 Cr.P.C at the time of carrying out search and seizure operations. Sub-Sec.(4) of Section 100 Cr.P.C reads as under:

**Section 100 in The Code Of Criminal
Procedure, 1973**

100. Persons in charge of closed place to allow search.

(4) Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do.”

A bare reading of the above provision makes it clear that it is mandatory on the part of the police officer to call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search and in that process, the officer can as well issue an order in writing to them to act as Panch witnesses.

17. The investigating agency is expected to follow the mandatory procedure scrupulously. Three opinions are available to the investigating officer, namely, either to secure an independent and respectable inhabitant of the locality or other locality and he can as well issue an order in writing, calling upon such persons to act as mediators. If a police officer makes an honest effort to secure the independent and respectable person of the locality but could not secure, that would not vitiate the search, provided he should make note of it in the proceeding that he made every endeavour to secure the presence of the local people or neighbouring residents. When independent and respectable persons are easily available in the locality, but no effort was made by the police officers to call them, then the accused is entitled to benefit of doubt for the serious lapse on the part of the investigating officer. If an investigating officer makes an earnest effort to secure the local residents or residents of the neighbouring locality, but failed to do so, that can be countenanced, but, when a police officer does not make any effort whatsoever nor does he offer any explanation for failure to secure independent witness, such act cannot be countenanced.

18. In the instant case, the confessions, recoveries and the apprehension of the accused were made by the police officers PW 11 from different places, which are far-flung from one another. The investigating officer PW 11 candidly admits that the apprehensions and recoveries were made from busy localities, but he would say that he did not try to secure any person of that area.

19. On the other hand, PW 11 has taken assistance of two villagers who were examined as PWs 4 and 6 to act as Panch witnesses for the arrest, search and seizure of the incriminating material from different places and not only that, the apprehensions and recoveries are also made from neighbouring districts. For instance, PW 4 who is a Village Administrative Officer (VAO) of Poolapalli,

Baggeswaram and Chintapalli villages of West Godavari District was called to the police station and was made to accompany the police officers on 5th/6th April, 2001. At about 5 p.m on 05.04.2001 the police officers along with PW 4 left Palakol and went to Poolapalli, apprehended A1 near Sandhya Merian Centre at 10 p.m and seized fake currency of Rs.1500/- from his possession. Thereafter, the same party went to a place of Vinayaka Temple at Attili, which is at a distance of 31 kilometres from Poolapalli and at about 11.15 p.m in the night A2 and A3 were apprehended and fake currency notes were seized from their possession. The same party continued the journey and they went to Eluru and reached there about 3.50 a.m on 06.04.2001. There they apprehended A4 and from his possession they recovered fake currency notes of about Rs.19,000/-. The same party continued the journey and reached Moripadu of East Godavari District and reached there at about 7.50 a.m on 06.04.2001 and apprehended A5 and A6 and seized from their possession fake currency notes worth about Rs.32,000/-. From Eluru, at the instance of A4, the search party is also said to have seized M.Os.1 to 13 which were found in a plastic gunny bag lying in a ditch near the house of A4, who is said to be a Homeopathic Doctor. M.O.1 is the Printer, M.O.2 is white screen frame, M.O.3 is a blue screen frame and M.Os.4 to 11 are ink tins. M.O.12 is thread and M.O.13 is gum stick. The investigating officer PW 11 fairly admits that he has not even made any attempt to see as to whether the printer, scanner found lying in a ditch in a gunny bag outside the house were in working condition, leave alone made any attempt to secure evidence to show that the said objects were used by the accused for printing fake currency notes, as alleged by the prosecution.

20. Similar exercise was repeated by the investigating officer PW 11 on 22.04.2001. This time, he called PW 6, another VAO of Palakol. It is the claim of PW 6 that in the midnight while he was in the

house, the police called him and he accompanied them to Eluru and went to Dakshanapu veedhi at about 4.40 a.m and apprehended A7 and A8, and thereafter, they went to Tadepalligudem and at RTC bus complex they apprehended A13 and A14 and seized fake currency notes worth Rs.1,10,000/- from their possession.

21. On either of the two occasions, as already stated, no endeavour was made by the police officer PW 11 to secure the presence of any independent and respectable inhabitant of the locality or neighbouring locality. It is pertinent to note that the investigating officer PW 11 along with PWs 4 and 6 has travelled far beyond their jurisdiction and went to the neighbouring district and carried out seizure and search operations and apprehensions of accused, but absolutely there is nothing on record to show that they have intimated to the jurisdictional police station, leave alone taking the local people as Panch witnesses. It is also on record that the police officers have not examined even single neighbouring residents of different places from where different accused were apprehended and fake currency notes were seized.

22. In a case of serious nature, such a conduct on the part of a senior police officer in ignoring the provisions of Code of Criminal Procedure in carrying out the search and seizure operations, even without following the basic requirements of intimating the jurisdictional police of within the district or out of the district while conducting investigation into a serious crime, is improper giving rise to criticism that the investigating officer was not fair in investigating the crime.

23. In addition to the above, what is noticed is that the evidence of PWs 4 and 6 and the investigating officer is not convincing and do not inspire confidence of the Court for upholding the conviction and sentence recorded by both the Courts below against the present petitioners.

24. As noted above, even though the police officers and village

officials who were examined as PWs 4, 6, 10 and 11 claimed to have arrested the accused and recovered the contraband, none of them could identify the accused persons standing in the dock as persons who were apprehended and the fake currency notes were recovered at their instance.

25. If the evidence of PWs 4 and 6 is perused, what is noticed is that they drafted the Panchanamas on the basis of certain slips on which certain information was written by the police officers which go to show that the Panchanamas were drafted at the place where they have alleged to have been drafted. According to the police officers, A1 was firstly apprehended and on the basis of his confession, the police party proceeded ahead and arrested the accused. PW 4 do not say anything of that sort. He does not say that at the instance of A1 or on the basis of confession of A1, they proceeded further and arrested the remaining accused. According to the prosecution, M.Os.1 to 13 were seized from the possession of A6 in the presence of PW 4. According to the investigating officer PW 11, M.Os.1 to 13 were found dumped in a plastic gunny bag and kept in a ditch outside the house of A6 whereas, according to PW 4, the police recovered about 27 materials when A6 himself produced the same.

26. According to PW 11 the investigating officer, only 13 objects were seized, whereas according to PW 4, as many as 27 items, including M.Os.1 to 13 were produced by A6 himself which were subsequently seized under cover of panchanama. PW 4 also admits that in addition to M.Os.1 to 13, some other items, the names of which he cannot say were also seized, including the photo copies and brochures of some fake notes. This is contrary to the claim of PW 11 the investigating officer. In the cross examination, PW 11 admits that he has not given any written intimation to anyone to accompany the police people for acting as Panch witness, similarly, PW 4 did not obtain permission from his superior officers for leaving the place of his

jurisdiction and proceeding to different places. It is also to be noted that along with PW 4 another Panch witness PW 5 was called and he turned hostile and categorically stated that the police called him to the police station and obtained his signatures on some papers. PW 4 admits that at the time of writing the Panchanams, at all the places the offenders were kept in the custody of the police at a distance of 6 yards and on the basis of the instructions given by the S.I. of Police, the Panchanamas were drafted. PW 4 also admits that he noted down the details of the arrested persons along with other properties in the reports after verifying the slips supplied to him by the S.I. of police. PW 4 also failed to say as to from which route they went from Poolapalli to Attili, and from Attili to Eluru. He could not give the location marks as to where the Electrical Department Guest house of Eluru is located, from where the accused were apprehended. According to PW 4 from Eluru they went to Bhimavaram and from Bhimavaram they went to Moripadu. According to PW 4, they travelled from Palakol to all places by bus and by crossing Godavari river. The investigating officer PW 11 do not say that they travelled by any bus for going from Palakol to Moripadu and crossed the Godavari river. PW 4 also admits that the police people did not call any other locality people to act as mediators.

27. The above evidence is in respect of the events that took place in the intervening night of 5th/6th April, 2001, during course of which, A1 to A6 were apprehended. A fortnight thereafter, i.e. on 22.04.2001, another limb of investigation started. This time, PW 6 was taken as Panch witness and in the night A7, A8, A13 and A14 were apprehended and PW 6 acted as a Panch witness for the apprehensions, confessions and recoveries. Along with PW 6, PW 7 is also said to have been taken as Panch witness, but he turned hostile and denied the case of the prosecution and asserted that his signatures were obtained in the Panchanama in the police station.

28. It is in the evidence of PW 6, VAO that on 22.04.2001 at

midnight a constable came to him from Palakol police station and took him to police station. They all went to Eluru which is at a distance of about 107 kilometres. There they apprehended A7 & A8. It is worth quoting the statement of PW 6 on this material aspect. PW 6 stated as under:

“One Shaik Kalisha-A8 was also present along with Subrahmanyam-A7 and both tried to escape by seeing the police. Then the police detained both of them and enquired and got their identity by the above said names. Then the Inspector of Police informed both of them that they are being arrested for the possession of fake notes, then the police seized fake notes of Rs.100/- notes, totalling Rs.40,000/- from A7 and Rs.100/- fake notes worth about Rs.10,000/- from A8.”

29. From the above claim of PW 6 what could be gathered is that the accused did not make any confession about their being in possession of fake currency notes before the same were produced and recovered. It is further in the evidence of PW 6 that thereafter they went to Tadepalligudem and reached there by 8 a.m and apprehended A13 to A16 and from them fake currency notes worth about Rs.1,15,000/- is said to have been recovered. PW 6, as already stated supra, failed to identify any of the persons who were arrested in his presence, even though during course of trial, he went round the place where the accused were standing and expressed his inability to identify the persons from whom the fake currency notes were seized. It is further in the evidence of PW 6 that in the Panchanama Ex.P10 the place of apprehension and recovery is shown as Tadepalli within Krishna district, but not Tadepalligudem of East Godavari district.

30. In view of the nature of the testimony that is produced by the prosecution, it is difficult to hold from the evidence of PWs 4 and 6, the police officers PWs 10 and 11, that the prosecution has proved beyond reasonable doubt that it is the accused who were apprehended and from their possession the material objects and fake currency notes

were seized. The present petitioners are also entitled to the benefit of doubt which is extended by the Courts below in respect of 11 other accused. Therefore, the conviction and sentence recorded by both the Courts below against the present petitioners cannot be sustained and is liable to be set aside.

31. For the reasons stated above, these five Criminal Revision Cases Nos.351, 352, 353, 355 & 442 of 2007 are allowed. Consequently, the judgments of both the Courts below are set aside and the present petitioners/A1, A4 to A8, A13 to A16 are acquitted of the offences for which they were found guilty and convicted. The bail bonds of the petitioners/A1, A4 to A8, A13 to A16 shall stand cancelled. The fine amount, if any paid, shall be refunded to the petitioners/A1, A4 to A8, A13 to A16.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date: 19.01.2016
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