

BAIL SLIP

The Appellants herein/Accused 1 & 3 Viz 1.Mohameed Sadullah Basha, aged 57 years S/o Nadeem, 2.S.Mani, aged 54 years, S/o.Subramani 3.Malik Basha, aged 61 years, S/o.Abdullah are released on bail vide order dated 14.08.2008, made in MP.No.1 of 2008 in CRL.A.No.595 of 2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.595 of 2008

1.Mohammed Sadullah Basha

2. S.Mani

3. Malik Basha

... Appellants

Vs

State rep. By
The Inspector of Police,
Ambur, Town Police Station,
Crime No.1142 of 2004.

.. Respondent

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgment passed by the Additional District and Sessions Court / Fast Track Court, Thirupattur in S.C.No.283 of 2007, dated 24.07.2008 convicting the appellants for alleged offence under section 489 (C) of IPC and sentencing them to 3 years RI each and to pay a fine of Rs.5,000/- each and in default to undergo the sentence of 6 months RI.

For Appellants : Mr.Sunder Mohan

For Respondent : Mrs.M.F.Shabana
Govt. Adv. (Crl. Side)

JUDGEMENT

A1 to A3 in S.C.No.283 of 2007, dated 24.07.2008, on the file of the Additional District and Sessions Court / Fast Track Court, Thirupattur, is the appellant herein. A1 stood charged for offence under Section 489 (B) IPC and A2 and A3 stood charged for the offence under Section 489 (B) read with 34 IPC and under Section 489 (C) IPC. The Trial Court convicted all the accused under Section 489 (C) IPC and they were sentenced to undergo three years rigorous imprisonment and to pay a fine of RS.5,000/- each, in default, to undergo six months rigorous imprisonment. The trial Court acquitted A2 & A3 under Section 489 (B) read with 34 IPC. Challenging the above conviction and sentence all the three appeal before this Court with this appeal.

2. Pending the appeal, A2 died on 12.1.2013. The learned Public Prosecutor has also filed a memo along with death certificate. Recording the same, the appeal against A2 is dismissed as abated.

3. The case of the prosecution is that PW1 was running a tea shop in MC Road, Railway line, Ambur. A1 used to take tea in the shop regularly. On 19.12.2004, at about 8 A.M., A1 came to the PW1 tea shop, took tea and gave a 100 Rupees currency note. On finding some difference in the currency note, PW1 asked him to give another note. Then, A1 gave 50 Rupees Currency Note, which also seemed to be different from the original currency note. When PW1 questioned A1, he said that somebody standing near the bridge has given 100 and 50 Rupees Note and asked him to get change. Then, neighbouring shop owners also came there and they took him to the police station and also filed a police complaint.

4. PW7, the Sub Inspector of Police in the respondent Police Station on receipt of the complaint, registered a case in Crime No.1142 of 2004, for an offence under Section 489 (B) and 489 (C) IPC and he also seized 100 and 50 Rupees Notes and sent the FIR to the higher officials. PW8, the Inspector of Police, on receipt of the complaint arrested A1 and on his arrest, A1 voluntarily gave a confession and he also identified A2 and A3. Then, PW8 took A1, to the Natarajapuram, Ambur, for identifying the other accused. On being identified by A1, PW8 arrested A2 and A3. On the arrest of A2, based on his confession statement, PW8, recovered 188 nos. of Rs.100 and 222 nos. of Rs.50 counterfeit notes, and on the confession statement of A3, he recovered 50 nos. of Rs.100 and 200 nos. of Rs.50 counterfeit notes. PW8, seized the counterfeit notes under the cover of Mahazar, Ex. P10, in the presence of witness. He took A1 and A2 to the police station, then went to the scene of occurrence, prepared observation Mahazar Ex.P3, and recorded the statement of other witness. Then, he sent the seized articles to the Court

under form 95 and he filed a memo to send the counterfeit currency notes for examination. The counterfeit currency notes seized from the accused was sent for chemical examination at Government Press at Nasik and after the receipt of the report, PW8, completed the investigation and filed charge sheet.

5. In order to prove this case, the prosecution has examined 9 witnesses and exhibited 22 documents and marked 5 material objects.

i) Out of the witnesses examined, PW1 is the owner of the tea shop, where A1 was trying to change 100 and 50 Rs. counterfeit notes and he filed a complaint. Based on his complaint, crime was registered. PW2 was working as tea master in the PW1 shop, turned hostile. PW3 is the neighbouring tea shop owner. On the date of occurrence, there was a wordy quarrel between PW1 and A1. When he enquired the same, PW1 informed that A1 was trying to give counterfeit currency note. PW4, Head Clerk working in the Judicial Magistrate Court, Ambur, received the seized counterfeit currency notes and sent them for examination. PW5, who is running a shop in the Railway line, has stated that on the date of occurrence, there was a quarrel in the PW1 shop and when he enquired, they told him that A1 was trying to change the counterfeit currency note in the PW1 shop. Then PW1 took A1 to the police station. PW6 is the Village Administrative Officer of Ambur Town. He is the witness to the arrest and recovery of counterfeit currency from the accused. PW7 is the Sub Inspector of Police, who registered the complaint and also seized counterfeit currency from A1. PW8 is the Inspector of Police who conducted the investigation and then handed over it to PW9. PW9, is the Inspector of Police in the respondent Police Station, filed the application before the Judicial Magistrate Court for chemical examination of the counterfeit currency and to send them to Government Press at Nasik. After obtaining report and recording the statement of other witnesses, filed charge sheet.

ii) The above incriminating materials were put to the accused. The accused denied the same. The accused examined 3 witnesses on their side, and according to DW1, A1 was arrested in his house, which is situated near a mosque. DW2 said that A3 was working in a Beedi Company. According to DW3, A2 is his relative and he is doing real estate business. Considering the above material, the Trial Court convicted the accused, as mentioned in paragraph 1 of the judgment. Now challenging the said sentence, the appellants are with this appeal.

6. Heard Mr.Sunder Mohan, learned counsel appearing for the appellants and Mrs.M.F.Shobana, Governmnet Advocate, learned counsel appearing for the respondent.

7. The learned counsel appearing for the appellant / A1, has submitted that the prosecution has failed to prove the seizure

of counterfeit notes. PW1 says A1 was caught red handed, while changing the counterfeit currency, and produced before the police station. But DW1 said, he was arrested in his house. Apart from that, even assuming that when the counterfeit currency notes were seized from A1, there is no evidence to show that he is having sufficient knowledge about the counterfeit currency and have the intention to use the same as genuine notes, in absence of any such evidence, Section 489(C) IPC is not attracted.

8. The learned counsel appearing for the 3rd appellant has contended that the prosecution has miserably failed to prove the seizure of counterfeit currency from A3. As per the prosecution, all the counterfeit currency were seized from the A3 under the cover of Mahazar P11, and it was witnessed by PW6, the Village Administrative Officer. On perusal of the seizure mahazar, the particulars of notes seized from A3 was not available. Even as per the evidence of PW8, the investigating officer sent the seized notes to the Court on 27.12.2004, and the same was returned for filing the particulars of the details of the currency notes. Thereafter, it was again represented on 12.09.2005, along with the particulars. Even in the seizure mahazar, particulars given in the detailed copy filed by the PW8, the signature of the witness was not there. Hence, the seizure itself was not proved by the prosecution. Hence, he sought for acquittal.

9. Per contra, the learned Government Advocate (Crl.Side) has submitted that A1 was caught red handed while changing the counterfeit currency notes in the shop of PW1, and immediately he took him to the police station and handed over to PW7, the Sub Inspector of Police. The counterfeit currency notes were seized from him and the same was sent for chemical examination at Government Press Nasik. The prosecution also established that accused has knowledge and intention to use the counterfeit currency notes. Hence, the prosecution proved the case beyond any reasonable doubt. Hence, prayed for dismissal.

10. I have considered the rival submissions made by both sides. So far as the charge against A1 is concerned, even though originally charged under Section 489-B IPC, the Trial Court altered the charge and convicted him under Section 489-C IPC. In order to prove the offence under Section 489-C IPC, the prosecution has to prove that the accused has knowledge about the counterfeit currency and he had intention to use the same. Mere possession of counterfeit currency will not attract the offence under Section 489-C IPC. Now, we have to consider whether the prosecution has established that the appellants/accused has knowledge about counterfeit currency notes and he had intention to use the same.

11. PW1, a tea shop owner, before whom A1 tendered counterfeit currency note of Rs.100 after consuming tea. When PW1 asked for another note, he tendered another Rs.50 Note, which was also found to be a counterfeit currency note. Then PW1 questioned him, A1 told him that 2 persons standing near the bridge has given the note, and asked him to get change. From evidence of PW1, it could be seen that only the other accused had given the counterfeit currency notes to A1, for the purpose of getting change. Apart from that, there is no evidence available to show that A1 has sufficient knowledge that the currency is a counterfeit currency, and he had intention to use same. In the above circumstances, I am of the considered view that the prosecution has failed to prove the offence under Section 489 (C) IPC and A1 is entitled for Acquittal.

12. So far as A3 is concerned, based on the discloser statement of A1, A2 and A3, counterfeit currency notes were seized by PW8. According to PW8, counterfeit currency notes were seized from them under the cover of Ex.P-11. As rightly contended by the learned counsel for the petitioners/accused, in the seizure Mahazar, there are no particulars regarding the numbers of note seized was available and also in the list filed by the investigating officer before the Court, the signature of the attester was not found in P6 mahazar. Apart from that even though currency notes were sent to Government Nasik Press for examination, and the report alone was marked and the expert was not examined by the prosecution. Even in the case of A3, there is no evidence to show that A3 has knowledge or intention to use the counterfeit currency notes.

13. In the decision reported in 2001 (4) CTC 380 (SC) (Umashanker Vs. State of Chattisgarh), which was relied on by the learned counsel for the appellant, the Apex Court held as follows:

".....A perusal of the provisions, extracted above shows that mens rea of offences under sections 489-B and 489-C is, "knowing or having reason to believe the currency notes or bank notes are forged or counterfeit". Without the afore-mentioned mens rea selling, buying or receiving from another person or otherwise trafficking in or using a genuine forged OB counterfeit currency notes or bank notes, is not enough to constitute offence under Section 489-B of IPC. So also possessing or even intending to use any forged or counterfeit currency notes or bank-notes is not sufficient to make out a case under section 48-C in the absence of the mens rea, noted above. No material is brought on record by the prosecution to show that the appellant had to requisite mens rea. The High Court, however,

completely missed this aspect. The learned Trial Judge on the basis of the evidence of the evidence of PW2, PW4 and PW7 that they were able to make out that currency note alleged to have been given to PW4, was fake 'presumed' such a mens rea. On the date of the incident the appellant was said to be 18 years old student. On the facts of this case, the presumption drawn by the trial court is not warranted under section 4 of the Evidence At. Further it is also not shown that any specific question with regard to the currency-noted being fake or counterfeit was put to the appellant in his examination under section 313 of Criminal Procedure Code. On these facts we have no option but to hold that the charges framed under sections 489-B and 489-C are not proved. We, therefore, set aside the conviction and sentence passed on the appellant under sections 489-B and 489-C of IPC and acquit him of the said charges (See.M.Mammuti Vs. State of Karnataka, AIR 1979 SC 1705)....."

14. In the above said circumstances, I am of the considered view that the prosecution did not prove the charge against A3 beyond any reasonable doubt. Under the circumstances, A3 is entitled for acquittal.

15. In the result, appeal is allowed and the conviction and sentence imposed on A1 and A3 are set aside and they are acquitted of all charges. Fine amount, if paid, shall be refunded to A1 and A3.

Sd/-

Assistant Registrar(CS III)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

To

1. The Additional District and Sessions Judge / Fast Track Court, Thirupattur.
- 2.-do-Thro' The Principal Sessions Judge, Velore District.
- 3.The Judicial Magistrate, Ambur.

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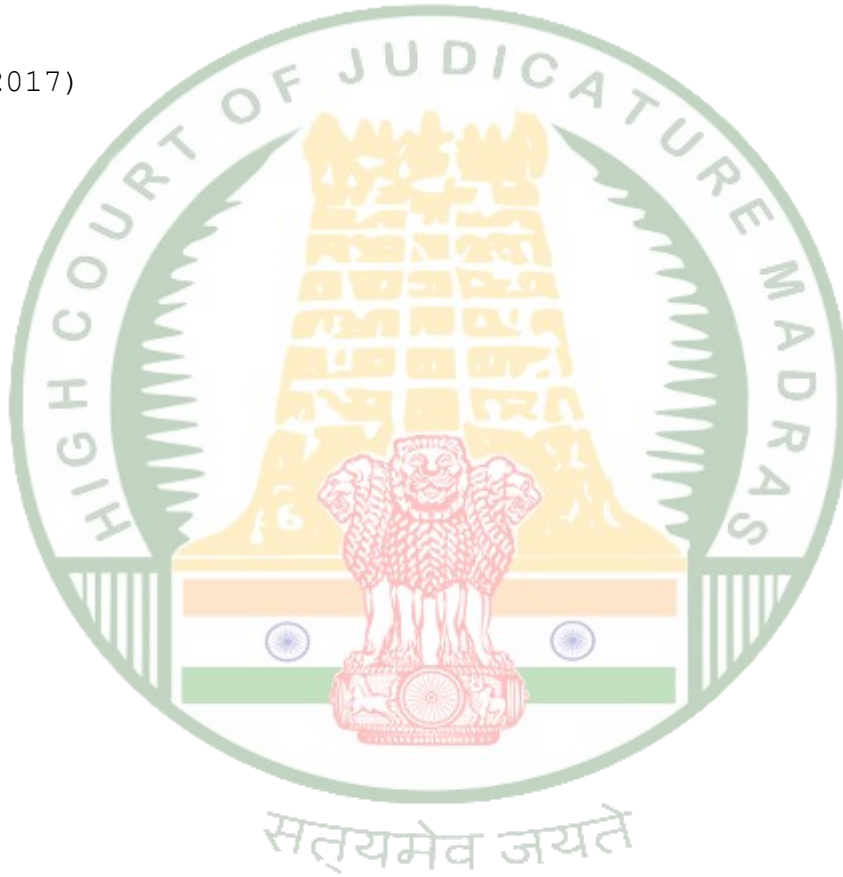
4.-do-thro'The Chief Judicial Magistrate,
Vellore.

5.The Inspector of Police,
Ambur, Town Police Station.

6.The Public Prosecutor,
High Court, Madras.

Crl.A.No.595 of 2008

GJII(CO)
GN(10/07/2017)



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