

bail slip

The First Appellant, namely Gurumurthy S/o.Duraisamy nadar was directed to be released on bail vide order dated 26.04.2006 in CrI.MP.No.1979/2006.

The Second Appellant, namely Daniel S/o.Subbaiah was directed to be released on bail vide order dated 22.03.2007 in CrI.MP.No.4163/2004.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 07.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CrI.A.No.320 of 2004

1) Gurumurthy

2) Daniel ... Appellants / Accused No. 1 & 2

vs.

1.The State, rep. by
The Inspector of Police,
CB-CID, (Counterfeit currency preventive unit)
Chennai 600 002
(Crime No.1/2000) ... Respondent / Complainant

Criminal appeal preferred under Section 374(2) Cr.P.C.,
against the judgement passed by the learned Additional Sessions
Judge, (Fast Track Court No.III), Chennai 600 001 dated
30.12.2003 made in S.C.No.347/2001.

For Appellant : Ms.Swadhi Subramaniam,
Legal Aid Counsel for A-1
Mr.Habeeb Rahman for A-2

For Respondent : Mr.R.Sekar
Government Advocate (CrI. Side)

JUDGMENT

The Accused 1 and 2, in Sessions Case No.347/2001, on the file of the learned Additional Sessions Judge, (Fast Track Court No.III), Chennai, are the appellants herein. They stood charged for the offences under Sections 120(b), 498(b) and 498 (c) IPC. The Trial Court, by judgement dated 30.12.2003, found the Accused 1 and 2 guilty and convicted them under section 120 (b) IPC and sentenced them to undergo 3 years rigorous imprisonment and to pay a fine of Rs.5000/- in default to undergo 6 months rigorous imprisonment; convicted them under section 498(b) IPC and sentenced them to undergo rigorous imprisonment for 9 years and to pay a fine of Rs.5000/- each in default, to undergo 6 months rigorous imprisonment, and convicted them under Section 498(c) IPC, sentenced them to undergo 9 years rigorous imprisonment and to pay a fine of Rs.5000/- each in default to undergo 6 months rigorous imprisonment. The sentences are ordered to run concurrently. Challenging the above said conviction and sentence, the appellants/accused are before this Court, with this appeal.

2. The case of the prosecution in brief is as follows:-

(i) P.W.1 is the Sub-Inspector of Police, working in CB-CID, Chennai. On 25.02.2000, at about 10.30 hours, based on the direction issued by the higher officials, P.W.1, along with two other Head Constables were on patrol near Ellis road and Wallajah road junction, Triplicane, Chennai. At that time, they found the second accused in this case standing there, after seeing the police, the second accused tried to escape from the spot. Immediately, P.W.1 caught hold of the second accused and enquired him, and the second accused informed him that he purchased some counterfeit currency notes from Chettikulam Disco Mani, Kothanar Ramasamy and the first accused and he has intended to use the counterfeit currency notes. P.W.1 searched the second accused in the presence of witnesses and found 15 numbers of 500 rupees currency notes in his packet. Since all the currency notes look like counterfeit currency, P.W.1 took the second accused along with witnesses to the CB-CID Police and file a special report [Ex.P1] before the Inspector of Police.

(ii). P.W.6, the Inspector of Police in the CB-CID, Counterfeit Currency Prevention Wing. Based on the special report submitted by P.W.1, registered a criminal case in Crime No.1 of 2000 for the offences under section 489 (b) and 489 (c) of IPC and prepared a first information report (Ex.B.7). Then he seized the counterfeit currency notes and also recorded the statement of the second accused in the presence of other witnesses. In the mean time, the first accused was arrested in respect of another criminal case in crime No.120/2000 on the file of Kovilpatti Police Station for the offence under

section 489(a) & 489(d) IPC. The statement of the first accused was recorded before the Judicial Magistrate, Chennai, while the first accused was produced on PT warrant. Then, he examined the other witnesses and recorded their statements and also sent the counterfeit currency notes for chemical examination at Nasik and obtained a report and after completion of investigation, he filed a final report.

3. Based on the above materials, the Trial Court framed charges as detailed above, the accused denied the same as false. In order to prove the case of prosecution, as many as 6 witness were examined, 7 documents were exhibited and 3 materials objects were marked.

4. Out of the said witnesses examined, P.W.1 is the Sub Inspector of Police working in CB-CID Branch, Counterfeit Currency Notes Preventive Section. According to him, while he was on patrol on 25.02.2000, on suspicion enquired the second accused and the second accused admitted that he has purchased counterfeit currency notes from three persons, namely, Chettikulam Disco Mani, Kothanar Ramasamy and the first accused and the second accused intended to use the same. Then, he recovered 15 numbers of 500 rupees counterfeit currency notes in the presence of witnesses and produced the accused before P.W.6 along with the special report. P.W.2 is the witness to the recovery of counterfeit currency notes and confession statement of the second accused. P.W.3 is the Village Administrative Officer at Kovilpatti. He spoke about the arrest of the first accused and also recovery of Xerox machines and 500 rupees denomination counterfeit currency notes in respect of another crime. P.W.4 was working as Assistant in Chief Metropolitan Magistrate Court, Egmore, Chennai. He sent the counterfeit currency notes for chemical examination. P.W.5 is the Inspector of Police, Kovilpatti Police Station. He spoke about the arrest of the first accused and recovery of Xerox machines and 500 rupee denomination counterfeit currency notes in respect of another Crime No.120 of 2000 on the file of Kovilpatti Police Station for the offence under section 489 (a) and 489 (d) IPC. P.W.6 is the Inspector of Police working in the respondent police station. He registered a case and prepared first information report, arrested the accused recovered the counterfeit currency notes, examined the witnesses and recorded their statements and after completion of investigation, he laid charge sheet.

5. With the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. Their defence was a total denial. The accused did not examine any witness and not exhibited any documents on their side.

6. Considering the above materials, the Trial Court convicted the accused for the offence as stated in the first paragraph of this judgment. Challenging the above said conviction and sentence, the accused 1 and 2 are before this Court with this appeal.

7. Earlier, when the matter was taken up for hearing on 03.10.2017, there was no representation for the first appellant and the case was posted for dismissal on 09.10.2017. On 09.10.2017, there was no representation for the second accused. In the said circumstances, Ms.Swathi Subramaniam, Advocate is appointed as legal aid counsel for the first appellant.

8. I have heard Ms.Swadhi Subramaniam, learned Legal Aid counsel appearing for the first accused and Mr.Habeeb Rahman, learned counsel for the second accused and Mr.R.Sekar, learned Government Advocate for the respondent.

9. The learned counsel for the first appellant contended that the first appellant was arrested in respect of another Crime No.120 of 2000 on the file of Kovilpatti Police Station for the offence under Sections 498-A and 498-D IPC and some materials was seized. P.W.5 is the Inspector of Police, working in Kovilpatti station alone deposed about it. Except the evidence of P.W.5., absolutely there is no materials available on record to show about the amount and recovery in the said Crime No.120 of 2000, the alleged confession statement of the first accused in the said crime number also not marked. The learned counsel for the first appellant further submitted that the first accused was convicted under Section 120(b), on the ground that both the accused conspiracy together in selling the counterfeit currency notes. To prove the conspiracy, the prosecution has relied upon the confession of the second accused. But, the confession of the second accused, it is only shows that the second accused did not receive any counterfeit currency notes from the first accused and in fact he has only purchased the counterfeit currency notes from one Chettikulam Disco Mani, Kothanar Ramasamy, but both of them were not added as accused in this case. Apart from that absolutely there is no material available on record to show that it is only the first accused has sold the counterfeit currency notes to the second accused and there is conspiracy between the first accused and second accused. The learned counsel for the appellants submitted that though the trial Court framed charges against the first accused only for the offence under Section 489-B IPC, the Trial Court convicted the appellants both under Sections 489-B and 489-C IPC, that apart the maximum sentence for the offence under Section 489-B is only 7 years, but the Trial Court convicted the first accused under Section 489-B IPC and sentenced him to undergo 9 years rigorous imprisonment. Pointing it out the same, the learned counsel for the first accused sought to set

aside the judgment passed by the lower Court.

10. The learned counsel appearing for the second accused would contend that the prosecution has miserably failed to prove the recovery of counterfeit currency notes from the second accused. P.W.2 recovery witness is only a stock witness. Even though number of public were present in Bells road and Wallajah Road Junction, Triplicane, as admitted by the prosecution, but no independent witness to the arrest and recovery of counterfeit currency notes was exchanged. Apart from that there is no materials available on record to show that the appellant had to requisite mens rea, he intended to sell the counterfeit currency notes. In the absence of any evidence that the appellant has knowledge about the counterfeit currency notes, the second appellant cannot be convicted under Section 489-C IPC. The learned counsel appearing for the second appellant further submitted that even though the trial Court framed charges against the second appellant only for the offence under Section 489(C) IPC. The Trial Court convicted him under Section 489(B) and 489(C) IPC, and sentenced him to 9 years rigorous imprisonment against the maximum sentence of 7 years for the offence under Section 489(C) IPC, on those grounds, the learned counsel for the second appellant sought to set aside the judgment of the trial Court.

11. Per contra, Mr.R.Sekar, the learned Government Advocate would contend that the second accused was arrested on suspicion and he was found in possession of 15 numbers of counterfeit currency notes of 500 rupees denomination, and on enquiry, he voluntarily given confession and based on that, crime was registered and recovered counterfeit currency notes were sent for chemical examination, which proved that all the currency notes are counterfeit currency notes. The first appellant given a voluntary confession that he only sold the counterfeit currency notes to the second appellant. The second accused also has given confession that he has received the counterfeit currency note from the first accused. In the above circumstances, the first accused is implicated in this case. Even though there is no specific charge has been framed by the Court below for the offence against the accused. Based on the materials available on record, the Trial Court convicted the appellants under Section 489-B and 489-C IPC, and there is no reason to interfere with the judgment of the Court below.

12. I have considered the rival submissions.

13. The case of the prosecution is that the second accused was found in possession of 16 Nos. of 500 denomination counterfeit currency notes, P.W.1, the Sub Inspector of Police, on suspicion, said to have enquired the second accused, at that time, the second accused voluntarily admitted that he has purchased the counterfeit currency note from the first accused

and two other persons and he has intended to use the same. Thereafter, P.W.1 took the second accused to the police station and submitted a special report and based on that P.W.6, the Inspector of Police registered a crime against him. Based on the disclosure statement of the second accused, the first accused was also implicated in this case. The further case of the prosecution is that A-1 and A-2 have entered in to a criminal conspiracy to use the counterfeit currency and in furtherance of the above conspiracy, the first accused said to have handed over the counterfeit currency note to the second accused, in turn the second accused intended to use the counterfeit currency notes. The first accused was implicated in this case only based on the confession given by the second accused. Apart from that the confession of the second accused, absolutely there is no materials available on record to prove the charge against the first accused. It is settled law that the confessions of the accused can not be the sole basis for conviction, but it can be used to support or lend assurance to other evidence available against the co-accused. Apart from that a perusal of confession of the second accused, it could be seen that one Kazhugumalai Chettikulam Disco Mani, Kothanar Mani and one Ramasamy told him that the first accused is in possession of counterfeit currency. Then, he has purchased 15 numbers of 500 denomination counterfeit currency notes from one Disco Mani and Ramasamy, he has not stated anything in his confession that he has purchased counterfeit currency notes from the first accused. Even from the confession of the second accused, absolutely there is no material to show that he has purchased counterfeit currency notes from the first accused.

14. Apart from that it is the evidence of P.W.5, the Inspector of Police, Kovilpatti Police Station, that the first accused was arrested at Kovilpatti in another Crime No.120 of 2000, which was registered against him for the offence under Sections 489-A and 489-D IPC, in the said crime, Xerox machines and some counterfeit currency notes were seized from him, but the Xerox machines and counterfeit currency notes were not marked before the Trial Court. Even the confession statement of the first accused was also not marked before the Trial Court. Even in the evidence of P.W.6, the investigating officer, he has only stated that he examined the first accused in the Chief Metropolitan Magistrate Court, Chennai while he was produced under PT warrant. In the above circumstances, absolutely there is no materials available on record to show that it is only the first accused sold the counterfeit currency note to the second accused.

15. So far as the second accused is concerned, it is the evidence of P.W.1 that while he was on patrol, on suspicion, he has arrested the second accused and counterfeit currency notes were seized from him, later he was charged with for the offence

under Section 489-C IPC, for possession of counterfeit currency notes. In order to prove the charge under Section 489-C IPC, the prosecution has established that the accused has knowledge about the counterfeit currency and he had the intention to use the same. Mere Possession of counterfeit currency alone will not attract the offence under Section 489-C IPC. Except the evidence of P.W.1, absolutely there is no evidence available on record to show that the second appellant had any mens rea to use the counterfeit currency notes. The Hon'ble Supreme Court in UMASHANKAR Vs. STATE OF CHHATTISGARH reported in 2001(9) SCC 642, it has held as follows:-

"8. A perusal of the provisions, extracted above, shows that mens rea of offences under Sections 489B 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 as genuine forged or counterfeit currency-notes or bank-notes, is not enough to constitute offence under Section 489-B of I.P.C. 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 489-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 the requisite mens rea. The High Court, however, completely missed this aspect. The learned trial judge on the basis of the evidence of P.W. 2, P.W. 4 and P.W. 7 that they were able to make out that currency note alleged to have been given to P.W. 4, was fake "presumed" such a mens rea."

16. Apart from that the second accused said to have purchased counterfeit currency notes from one Disco Mani and one Kothanar Ramasamy. Both of them were not made an accused and absolutely there is no investigation regarding the purchase of counterfeit currency notes by the second accused.

17. So far as the next contention of the learned counsel appearing for the appellants that even though no specific charge has been framed against the first accused, the trial Court convicted him for the offence under Section 489-C IPC and imposed a sentence to 9 years rigorous imprisonment against the

maximum sentence of 7 years as prescribed under Section 489 Cr.P.C. Likewise, the learned counsel for the second appellant has also contended that the trial Court convicted the second accused for the offence under Section 489-B IPC and sentenced to 9 years rigorous imprisonment against the maximum sentence of 7 years as prescribed under Section 489 Cr.P.C. I find much force in the arguments of the learned counsel for the appellants, the trial Court without framing charges properly and without any evidence mechanically convicted the second accused under Section 489-B and 489-C IPC. Apart from that the trial Court also imposed a sentence for 9 years rigorous imprisonment for the offence under Section 489-C IPC against maximum sentence of seven years rigorous imprisonment prescribed for the offence under Section 489-C IPC and the trial Court has convicted the accused on a total non application of mind. So far as the charge under Section 120-B IPC is concerned, considering all the materials available on record, I am of the considered view that absolutely there is no materials available to show that both the accused conspired together to commit them illegal act and in furtherance of the above said conspiracy, the second accused sell the counterfeit currency notes and hence the conviction under Section 120-B also is liable to be set aside. Considering the above materials, I am of the considered view that the prosecution has failed to prove the charges against the appellants beyond any reasonable doubt and the appellants are entitled for acquittal.

18. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the appellants/accused in S.C.No.347 of 2001 dated 30.12.2003 on the file of the learned Additional Sessions Judge, (Fast Track Court No.III), Chennai is set aside and the appellants/accused are acquitted from the charges levelled against them and bail bond, if any, executed by them shall stand cancelled and the fine amounts, if any, paid by them are ordered to be refunded forthwith.

19. Before parting with the case, I appreciate the valuable assistant rendered by the Legal Aid counsel Ms.Swathi Subramanian, a recently enrolled young lawyer thoroughly prepared the case and presented the case neatly. The Legal Services Authority is directed to pay the fees as per Rules.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional Sessions Judge,
Fast Track Court No.III,
Chennai.

2.The Inspector of Police,
CB-CID Chennai.

3.The Public Prosecutor,
High Court, Madras.

4.The Secretary
High Court Legal Services Authority
Madras 104

+1 cc to Mr.T.K.Sampath Associates Advocate sr 79457

+1 cc to Ms.Swathi Subramanian Advocate sr 79526

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