

BAIL SLIP

1.The Appellant/Accused No.1 namely Khaja @ Khaja Mohamed Ismail was enlarged on bail and in by the order dated 03.07.2008 made in M.P.No.1 of 2008 in CrI.Appeal No.496/2008 on the file of this Hon'ble High Court, Madras filed against the S.C No.392/2007 dated 01.07.2008 on the file of the VII Addl. Sessions Judge, Chennai.

2. The Appellant/Accused No.4 namely Ponnudurai was enlarged on bail and in by order dated 29.07.2008 made in M.P.No.1/2008 in CrI.A.No.558/2008 on the file of this Hon'ble High Court Madras filed against the S.C.No.392/2007 dated 01.07.2008 on the file of the VII Addl. Sessions Judge, Chennai.

3. The Appellant/Accused No.3 namely Sathiya @ Sathyamurthy was enlarged on bail and in by order dated 14.08.2008 made in M.P.No.1/2008 in CrI.A.No.578/2008 on the file of this Hon'ble High Court Madras filed against the S.C.No.392/2007 dated 01.07.2008 on the file of the VII Addl. Sessions Judge, Chennai.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.03.2018

DELIVERED ON : 03.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CrI.A.Nos.496, 558 & 578 of 2008

Khaja @ Khaja Mohamed Ismail

...Appellant/Accused No.1 in CrI.A.496/08

Ponnudurai

...Appellant/Accused No.4 in CrI.A.558/08

Sathya @ Sathyamurthy ... Appellant/Accused No.3 in CrI.A.578/08

Vs

The State rep. by the
Inspector of Police,
CBCID, CC Wing,
Chennai.

... Respondent/Complainant in all the Crl.A.s

Common Prayer: Criminal Appeal filed under Sections 374(2) of the Code of Criminal Procedure, to call for the records in S.C.No.392 of 2007 on the file of the VII Additional Sessions Judge, Chennai and set aside the judgment dated 01.07.2008.

(In all the Crl.A.s)

For Appellants : Mr.S.Ashok Kumar, Senior Counsel
for Mr.K.Govi Ganesan

For Respondent : Mrs.T.P.Savitha
Government Advocate (Crl.Side)

COMMON JUDGMENT

All these three Criminal Appeals are filed by three Appellants/Accused as against the judgment of conviction passed in Sessions Case No.397 of 2007 dated 01.07.2008 by the learned VIIth Additional Sessions Judge, Chennai. The Criminal Appeal No.496 of 2008 is filed by the 1st Appellant who is the 1st accused, Crl.A.No.558 of 2015 was filed by the appellant who is the 4th accused and Crl.A.No.558 of 2008 is filed by the appellant who is the 3rd accused before the learned Trial Court. For the sake of convenience, the appellants are hereafter referred as per their rank and capacity hold in the trial Court. Another accused arrayed as A2 namely Christy was died during trial.

2.The learned Trial Court found all the appellants/Accused as guilty and imposed the sentence as follows:

The 3rd accused was acquitted from the charge under Section 489(A) of Indian Penal Code. At the same time the 1st and 4th accused are convicted for the offence under Section 120(b) r/w 489(C) of IPC. Further, the 3rd accused was convicted for the offence under Section 120(b) r/w 489(B) and (C) of IPC, accordingly under section 489(C) of IPC all the Accused/Appellants were imposed 4 years of Rigorous Imprisonment along with fine of Rs.2,000/-, in default 6 months of Rigorous Imprisonment was also imposed. For the offence under Section 120 (b) r/w 489(B) the 3rd accused was imposed 7 years of Rigorous Imprisonment and was also imposed a sum Rs.5,000/- as fine and in default he has to suffer 1 year of Rigorous Imprisonment.

3. Feeling aggrieved over the judgment of conviction all the accused filed three separate appeal and they have been clubbed together, accordingly they have been disposed of by way of this Common Judgment.

4. The case of the prosecution is that on 02.06.2003, when the respondent on the regular patrolling duty in front of Shanthi Theatre, Anna Salai, Chennai, the 1st and 2nd accused possessed 15 numbers of counterfeit 100\$ American Dollar and the 3rd accused possessed 350 number of counterfeit 100\$ American Dollar along with negative films used for the process of counterfeiting currencies. The 4th accused on the same day at about 15.45 hours, found possessed 65 numbers of 100\$ American Dollars. The 3rd accused entrusted each 50 numbers of 100\$ American Dollars to the 1st and 2nd accused and 65 numbers of 100\$ American Dollars to the 4th accused with an intention to use the same as genuine currency. The 3rd accused performed the process of counterfeiting the aforesaid American Dollars in a printing press namely Lavanya processing at Thiruvotriyur. So, a case was registered on the complaint given by a Sub-Inspector of Police attached with the CB-CID counterfeit currency prohibition wing. After the completion of investigation, final report was filed as against all the accused under Section 120(b) r/w 489 (B), 489(C) of IPC.

5. In pursuance of the final report filed by the Inspector of Police concerned the case was taken on file by the learned Chief Judicial Magistrate concerned and the same was committed to the file of the learned Principal Sessions Judge, Chennai and thereafter the same was made over to the file of the learned Trial Court.

6. It is seen from the records that to prove a case, the prosecution examined PW's 1 to 4 and marked Exhibits-P1 to P12 and also produced MOs.1 to 8. On the side of the Accused/Appellants no witness was examined but Exhibits-R1 to R3 were marked. Considering the totality of the case, the learned Trial Court found the appellants/accused are guilty and the sentences were imposed accordingly.

7. The learned counsel for the appellants/accused would submit that though the prosecution witnesses have not supported the case of the prosecution to prove the charges against the Appellants/Accused, without considered the same on the part of the prosecution, conviction has been recorded. He would also submit that the alleged confession, recovery were made in the presence of PW-3, but he has admitted in the cross examination that he is a stock-witness. So, the alleged confession and recovery of the appellants/accused is unbelievable, when these

vital aspects have become doubtful, then the case of the prosecution is to be thrown out. All the prosecution exhibits were prepared only in the presence of PW-3 is doubtful that too he himself has admitted that he is a stock-witness and the learned trial Court has not considered these material lacunas, hence this Court in the appellate jurisdiction, in the interest of justice may re-appreciate the evidence and set-aside the judgment of conviction.

8.Per contra, the learned Government Advocate (Criminal Side) has contended that the prosecution has proved the case beyond all reasonable doubts and the oral and documentary evidence are found intact. Apart from that it is no need for the prosecution to foist any false case as against the appellants/accused. So, the learned trial judge has rightly appreciated the facts, evidence and circumstances of the case and found guilty of all the appellants/accused which does not warrant any kind of interference and prays for the dismissal of the appeals.

9.I heard Mr.S.Ashok Kumar, learned Senior Counsel for Mr.K.Govi Ganesan, learned counsel for the appellants and Mrs.T.P.Savitha, learned Government Advocate (Criminal Side) for the respondent in all the Criminal Appeals and all the materials available on record are perused.

10.It is seen from the records that according to PW-1, the Sub-Inspector of Police attached with Counterfeit currency prohibition wing, Chennai, on information conducted surveillance at Anna Salai, near Shanthi Theatre on 02.06.2003. The informant identified two persons who were found possessed of counterfeit American dollars as stated supra. PW-1 in the presence of PW-2 recovered M.O.s-1 and 2 series through recovery mahazars Exs.P-1 and P2. Hence, he proceeded to the Police Station along with the accused and material objects and lodged complaint Ex.P3 with PW-4. Thereafter, they proceeded to search the 3rd accused followed by the confessional statement of the 1st and 2nd accused. From the 3rd accused also recovery was made followed by confessional statement. Pursuant to this, they proceeded to search the 4th accused and from whom also M.O.-7 series were recovered.

11.In order to ascertain the currencies are counterfeit steps were taken through Exs.P4 and P5, but the perusal of the same would disclose that they will not be the proper course. No steps were taken properly to prove the same which in the considered opinion of this Court would affect the prosecution case. Further, no steps were taken to bring another accused into the case, who is allegedly owner of the printing press. Apart

from that the discrepancies found between Exs.D1 to D3 and Exs.P4 and P5 have not been dealt with by the learned trial Court.

12.This is a case of possession of counterfeit American dollars. Then it is the duty of the prosecution to prove that the counterfeit currencies are American dollars not by obtaining opinion from the concerned authorities, but the concerned authority ought to have been examined as witness. The non-examination of the concerned witness is a serious lapse on the part of the prosecution.

13.Further, all the recoveries were made in the presence of PW-3 which has not inspired confidence in the mind of the Court as admittedly he is a stock witness. At the same time, there is no explanation as to why another recovery witness namely one Perumal was not examined. The overall appreciation of evidence available would show that the investigation has not conducted in a proper manner which leads to the way to consider the grounds raised in the memorandum of appeal.

14.Therefore, in the considered opinion of this Court, the case of the prosecution has not been proved beyond all reasonable doubts and this Court is constrained to allow all the three appeals.

15.In the result:

(a) all the three Criminal Appeals are allowed;

(b) the sentence and conviction imposed in S.C.No.392 of 2007, dated 01.07.2008, on the file of the learned VII Additional Sessions Judge, Chennai, is set aside and the appellants/accused are acquitted from all the charges;

(c) the fine amount if any paid by the appellants/accused shall be refunded.

vs

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

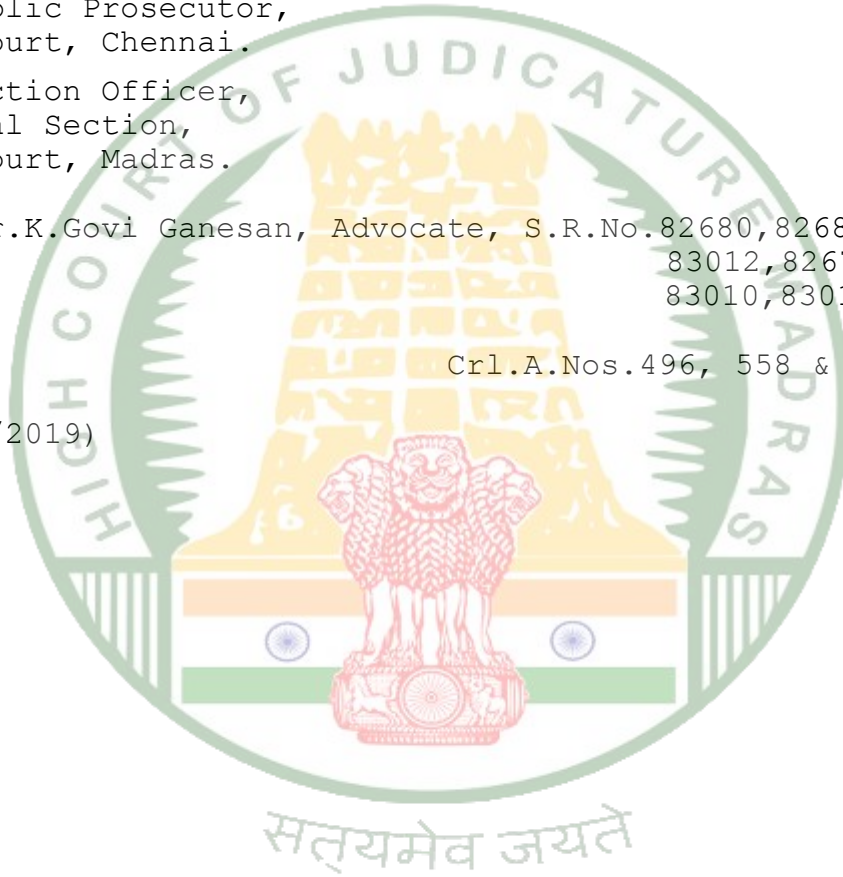
1. The VII Additional Sessions Judge,
Chennai.

2. The Inspector of Police,
CBCID, CC Wing,
Chennai.
3. The Director General of Police,
Mylapore, Chennai - 4.
4. The Collector,
Chennai.
5. The Superintendent,
Central Prison,
Puzhal, Chennai.
6. The Public Prosecutor,
High Court, Chennai.
7. The Section Officer,
Criminal Section,
High Court, Madras.

+6cc to Mr.K.Govi Ganesan, Advocate, S.R.No.82680,82681
83012,82679
83010,83011

Crl.A.Nos.496, 558 & 578 of 2008

AK(Co)
KAK(02/01/2019)



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