

Bail Slip

The Appellant/Accused, namely Mani aged 54 years, S/o Vaithi Gounder was directed to be released on bail, vide order of dated 16.04.2009 made in M.P. No.1/2009 in CrI.A. No. 103/2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.01.2018
DELIVERED ON : 08.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.103 of 2009

Mani

... Appellant/Accused

Vs

State by
The Inspector of Police,
Sirupakkam Police Station,
Transfer to
Inspector of Police,
CBCID, (Counterfeit Currency Branch)
Chennai.
(Cr.No.143/1999)

.... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, against the judgment and order passed in S.C.No.322 of 2007, dated 09.02.2009 on the file of the Additional District Sessions Court/Fast Track Court-III, Virudhachalam, Cuddalore District, whereby imposing sentence for 10 years and fine amount of Rs.25,000/- for the alleged offence under Section 489(b) IPC.

For Appellant : Mr.C.Prakasam

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

JUDGMENT

This Appeal is directed against the Judgment made in S.C.No.322 of 2007 on the file of learned Additional District and Sessions, (Fast Track Court III), Virudhachalam. The accused in the above Sessions case assails the Judgment of conviction for an offence under section 489(B) of IPC sentencing him to

undergo 10 years Rigorous Imprisonment and Rs.25,000/- fine and in default to pay fine amount to undergo two years Rigorous Imprisonment.

2.The appellant herein namely Mani is the Sole Accused and the charge stands that with due knowledge he dealt with a counterfeit currency note towards a payment to the defacto complainant namely K.Senthil Murugan. The corresponding final report leveling charges against accused was found filed by the respondent Police out of the Investigation conducted over defacto complainant's complaint dated 04.12.1999.

3.According to Senthil Murugan, on 04.12.1999 at about 1.00 p.m. the accused herein who is engaged in groundnut wholesale business had purchased two bag i.e., 10kg of Manila (Groundnut) paying Rs.1200/- as sale price such that Rs.1200/- was paid in denomination of two 500 Rupee notes and two 200 Rupee notes. However, the said Senthil Murugan having found one of the 500 Rupee Currency Note varied in colour presented it to bank for getting change. Whereas it was returned by the Bank in pretext of counterfeit Currency, immediately the subject complaint dated 04.12.1999 came to be lodged by said Senthil Murugan as against accused / appellant calling for an action towards his fraudulent act of dealing with counterfeit currency note.

4.The said complaint came to be registered in Crime No.143 of 1999 by the respondent Police under section 439 (B) and 439 (C) of I.P.C. According to complaint the appellant and intermediates between himself and the accused also played role in aiding payment of a 500 Rupees counterfeit note. Accordingly, the FIR was registered against six persons including the appellant in Crime No.143 of 1999. The respondent Police conducted Investigation and filed their final report leveling charge against the accused for an offence under section 489(B) and (C) of I.P.C. before the learned Judicial Magistrate No.I, Virudhachalam in PRC.No.25 of 2007. As the charge under Section 489 (B) and (C) being one to be tried by the learned Sessions Court it was committed before the learned Sessions Court, Cudalore and was made over for trial before the Trial Court for disposal. During investigation the allegations against other persons are untrue, the respondent police had not leveled charges against other accused excepting the appellant and thereby the appellant alone faced Criminal Charge in the above Crime Number. The said case was taken on file in the above S.C.No.322 of 2007.

5.To substantiate prosecution version, totally 15 witnesses were examined and 17 documents were marked, two material objects in M.O.1-the Counterfeit Currency and M.O.2-the lorry used by the appellant in his groundnut wholesale business were produced. During trial PW5, PW8, PW9, PW10, PW11, and PW12 turned hostile.

6.The learned trial Judge on appraisal of the evidence let in by prosecution concluded that the prosecution has proved the case against the appellant beyond reasonable doubt and thereby convicted the accused in above terms. As against the same the present Criminal Appeal by the Appellant/Accused.

7.I heard Mr.C.Prakasam, learned counsel for the appellant and Mrs.T.P.Savitha, learned Government Advocate (Criminal Side) for the respondent and perused the entire materials available on record.

8.As per prosecution case, on 04.12.1999, the Appellant/Accused went for his business to Sirupaataan Village. PW4 Rajendran acted as Intermediary for ground nut purchase. The defacto complainant has sold his produce to appellant for a sum of Rs.1200/- and was paid through PW4 Rajendran.

9.It is further case of the defacto complainant that one of the 500 Rupee Notes differed slightly in colour to check its genuineness, through one Muthusamy it was presented before Bank for tender exchange. When said Muthusamy tendered the currency note before PW7, the Manager of Bank, it was returned by PW7 stating to be a counterfeit note.

10.When the same was represented before the appellant and a demand was made to pay a genuine note, the appellant received back the said 500 Rupee Note seeking time to pay Rs.500 by evening. However, as appellant failed to pay Rs.500, the above complaint was lodged.

11.On perusal of Impugned Judgment and case records it is seen that the Trial Court has convicted the appellant over strong reliance upon the version of PW1 and PW7, the defacto complainant and the Bank Manager respectively.

12.Only on conjoint reading of version of PW1 and PW7 and the Analysis report, the Trial Court has come to the conclusion that the accused was guilty of offence under section 489 (B) of I.P.C. for having dealt with the counterfeit currency note with due knowledge.

13.Accordingly in view of the fact that the conviction on appellant has its root from the version of PW1, PW7 this Court deems fit to scrutinize their evidence firstly.

14.The PW1 has deposed that on the date of occurrence, the appellant and his men purchased groundnut Kernel and paid two five hundred Rupee currency note and two 100 Rupee currency note totally a sum of Rs.1200/-. On suspicion as to genuineness of a 500 Rupee note it was tendered for exchange before Bank. Whereas the PW7 Bank Manager refused to give tender change affirming Ex-P1 as counterfeit note and thereby returned it. When the appellant's illegal Act of dealing with the above 500 Rupee note

was questioned, with a promise to pay 500 Rupee, the appellant received back the counterfeit note. As the appellant failed to keep up his promise, the Police complaint was lodged at 6.00 p.m. before the respondent Police and investigation was conducted.

15.Ex.P1 the counterfeit currency and lorry were seized by the respondent police from appellant. In the said factual backdrop from the Analysis report the currency note was confirmed to be a counterfeit.

16.There can be no doubt that Section 489 of IPC contemplates adverse inference to be drawn against the accused provided that the prosecution put forth some reliable materials against the accused. It is not as though the prosecution need not establish their case at the first instance and such that adverse inference against the accused will come to play at the first instance before introduction of prosecution' role to satisfy the Court by reliable evidence.

17.In the case on hand it is seen that one Mr.Muthusamy who said to have tendered the 500 Rupee note before the Bank was not examined by the prosecution. Absolutely there is no material put forth by the prosecution to establish that there was a transaction (or) sale between the defacto complainant and the accused.

18.The most disturbing aspect is that though the prosecution case is that the currency note was presented by afternoon at 1:00 p.m. before the Bank by the prosecution, the Bank Manager has deposed that since being Saturday the Bank worked till 12:00 p.m. It is equally important to note that once having found that the currency note is a counterfeit, the same ought to have reported to the Police or ought to have forwarded for appropriate action under law by PW7. However, it is prosecution case that PW7 by stating the Currency note a Counterfeit simply returned to Muthusamy.

19.It has to be borne in mind that it is practical that a business merchant engaged in wholesale and retail would definitely come across a counterfeit currency note during payments. Now a day even at ATM machines, counterfeit currencies were sometimes found drawn by the Bank account holders. In such case definitely the person in possession of such currency will not have suspicion as to genuine of the currency notes drawn from a Bank ATM. Only when it is presented again before Bank personnel the character of the currency note will come to lime light.

20.Coming to the facts of the instant case, though it is averred that the appellant paid other persons too by counterfeit currency note, none of them are examined. More so except the subject currency note and a Lorry nothing was claimed to be seized from the accused.

21.It is needless to say that there were no any counterfeit currency note found excepting the subject note, if at all the accused/appellant happened to be habitual offender engaged in circulation of counterfeit Bank notes, naturally at the least one another note or a tool aiding counterfeiting note would have been recovered by the police.

22.Admittedly in the case on hand there was no material objects recovered from the appellant. The recovery formalities said to have been involved in seizure of the Bank note and also the physical transmission of the counterfeit coin is not sufficiently established by the prosecution to hold the accused guilty of offence charge.

23.In the case on hand, the Non-examination of Muthusamy and Non-production of document to establish business transaction between the defacto complainant and the appellant remains fatal to prosecution case to establish that the accused had prior knowledge of counterfeit note.

24.In this regard, it would be relevant to look into the decision of the Hon'ble Apex Court made in M.Mamooti Vs State of Karnataka reported in 1979 (4) SCC 723, holding that where it is not shown that the appellant had knowledge or reason to believe that the notes were counterfeit, conviction not proper.

25.It is also relevant to look into yet another decision of Hon'ble Apex Court reported in 2001 (9) SCC 642 in the matter of Uma Shankar Vs State of Chattisgarh wherein it was held that mens rea on the part of accused to have reason to believe the same to be forged (or) counterfeit is essential to constitute offence under section 489 (B) and (C). It was a case of involving identical situation but pertains to sale of Mango. It was the prosecution case therein that the accused therein having purchased 1kg of Mango paid a fake currency note of Rs.100.

26.In the said case, the findings of the trial Court and the High Court's order of confirming the Sentence on accused was set aside by the Hon'ble Apex Court holding that the prosecution has failed to establish knowledge of means rea or reason to believe the currency note be forged or counterfeit.

27.In applying the said legal preposition, I found that the prosecution has miserably failed to establish the charge against the appellant as such there is no material record to show that the appellant had knowledge or reason to believe that the currency note is a counterfeit note.

28.Thus in line with the above legal dictum laid down by the Hon'ble Apex Court and in view of above discussion, the impugned Judgment is liable to be set aside.

29.In the result, the Criminal Appeal stands allowed, the

appellant is hereby acquitted of the offence under Section 489-B of I.P.C. in S.C.No.322 of 2007 on the file of the learned Additional District and Sessions, Fast Track Court III, Virudhachalam. The fine amount if any paid by the appellant is directed to be returned to him.

-s/d-
Assistant Registrar(CS-IX)

True Copy

Sub-Assistant Registrar

vs
To

1. The Additional District Sessions Court/
Fast Track Court-III, Virudhachalam,
Cuddalore District.
 2. The Inspector of Police
Sirupakkam Police Station
 3. The Inspector of Police
CBCID(Counterfeit Currency Branch)
Chennai.
 4. The Public Prosecutor
High Court, Madras 104.
- +1 CC to Mr.C. Prakasam, advocate sr 76596.

SP(13/11/2018)

Criminal Appeal No.103 of 2009

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