

Bail Slip

The Petitioner/Accused No.2 viz., Wesley, S/o.Ruban be and hereby was directed to be released on bail as per the order of this Court, dated 15.09.2010 and made in CrI.MP.No.1 of 2010 in CrI.A.No.374 of 2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.09.2019

Pronounced on : 13.09.2019

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CrI.A.No.374 of 2010

R.Wesley

...Appellant / A2

Vs.

State Rep. by  
Inspector of Police, CB CID  
Counterfeit Currency Wing  
Chennai-2  
(Cr.No.327/94)

... Respondent/ Complainant

PRAYER: Criminal Appeal has been filed under Section 374 (2) of Criminal Procedure Code to set aside the Judgment and order dated 31.05.2010 passed by the Additional District and Sessions Judge, Fast Track Court-I, Chennai-1 in Sessions Case No.303/09.

For Appellant : Mr.K.G.Senthil Kumar

For Respondent : Mrs.M.Prabhavathy

Additional Public Prosecutor

JUDGMENT

This Criminal Appeal has been filed by the appellant to set aside the Judgment and order dated 31.05.2010 passed by the Additional District and Sessions Judge, Fast Track Court-I, Chennai-1 in Sessions Case No.303/09.

2.For the sake of convenience, the parties are hereinafter referred to in this judgment as they are arrayed before the Trial Court.

3.The Appellant is the Accused No.2 in S.C.No.030 of 2019. The Accused No.2 along with one C.Paulraj was charged and tried for the offence under Section 120(B), 489(B) & 489(C) IPC. The Trial Court examined PW1 to PW7 and marked Ex.P1 to Ex.P24 and Material Objects M.O.1 to M.O.4 on the side of the prosecution and on conclusion of trial, the Trial Court found the 2<sup>nd</sup> Accused guilty for the offence under Section 120(B) IPC and convicted

and sentenced him to undergo Rigorous Imprisonment for five years and for offence u/s.489(B) IPC, sentenced him to undergo Rigorous Imprisonment for six years and to pay a fine of Rs.5,000/-, in default to undergo one year Rigorous Imprisonment. The above sentences are ordered to run concurrently by judgment dated 31.05.2010. Against which, the present Criminal Appeal has been preferred.

4. So far as Accused No.1 is concerned, he was convicted for the offence u/s.120(B) and 489(C) IPC and he was sentenced to undergo Rigorous Imprisonment for six years and to pay a fine of Rs.5,000/- and in default to undergo one year Rigorous Imprisonment, against which, Accused No.1 filed a Criminal Appeal in CrI.A.No.82 of 2012. It is represented that Accused No.1 died, hence the Criminal Appeal No.82 is dismissed as abated on 27.08.2019. Hence, we are now concerned with Accused No.2 in this Appeal.

5. The case of the prosecution is that on 21.03.1994 at about 5.30 p.m when PW6, Thiru R.Ramadoss, Assistant Commissioner, Police Training Centre, Chennai was on patrol duty along with the police party near Anna Nagar, Tower Park, the accused persons Wesley (A2) and another accused viz. Ullasakumar were standing in a suspicious manner. On examination, the 2<sup>nd</sup> accused voluntarily stated that he was in possession of counterfeit currency notes of Rs.500/- x 4 = Rs.2,000/-, Rs.100/- x 2 = Rs.200/-. The other accused person Ullasakumar was in possession of Rs.100 x 8 = Rs.800/-. Thereafter, P.W.6 arrested the accused persons and recorded their confession statements and seized the counterfeit currency in the presence of PW5. Thereafter, a case came to be registered in Crime No.327/94 for the offence u/s.489(C) IPC by P.W.6. Since it was seizure of counterfeit notes, a report of the case was sent to the Commissioner of Police on 23.03.1994. Thereafter, the case was transferred to CBCID, Counterfeit Currency Wing, Chennai.

6. P.W.7, the Inspector of Police, CBCID, Counterfeit Currency Wing, Chennai, took up the case for further investigation and included the Section 489(B) IPC and filed an altered express report Ex.P.21 before the V Metropolitan Magistrate Court, Egmore, Chennai-8. Thereafter, on 15.09.1994 P.W.7 arrested one Victor in front of Ayanpuram Sayani Theatre, who later turned as approver on 28.09.1994. P.W.7 arrested A1, Paulraj on 11.01.1995 at the junction of L.B.Road, Adyar in the presence of P.W.1 one Kumar. The approver /Victor's statement was recorded u/s.164 Cr.P.C. by the VIII Metropolitan Magistrate, George Town, Chennai, on 01.02.1996. The accused Victor was tendered pardon by the XI Metropolitan Magistrate on 15.11.1999, P.W.7 on completion of investigation filed a charge sheet in this case, which was taken on file as S.C.No.303 of

2009 against the accused for the offences u/s.120(B), 489(B) and 489(C) IPC.

7.Since A3 Ullasa Kumar has absconded, the case as against him has been split up.

8.The contention of the learned counsel appearing for A2 is that the Approver in this case, one Victor has not been examined as witness in this case, since he had passed away prior to the Trial. P.W.2 & P.W.3 are the learned Metropolitan Magistrates, who had recorded the 164 Statement and tendered pardon. The Trial Court had found the accused guilty solely on the evidence of P.W.2 & P.W.3 and based on the 164 Statement of the said Victor i.e. Ex.P.10. Except the confession of said Victor, there is no other materials available as against A2. As the said Victor has not been examined as witness, his confession statement cannot be acted upon. The statement of any of the approver examined under Section 306(4)(a) Cr.P.C would be relevant and admissible under Section 33 of Evidence Act only if the accused persons not only had the "right" but also the "opportunity" to cross examine the approver. Hence, in this case, A2 could not be confronted and no reliance can be placed on the statement of the said approver Victor.

9.The learned counsel would further contend that Serial numbers in Ex.P15 & Ex.P24 and Sl.No.Ex.P.20 differ. The other independent witness is one P.W.5, who is the witness for arrest and confession of A2. This witness has also not supported the case of the prosecution and he was treated hostile. There is no seizure as against A2 and his case has not been proved. Further, on a perusal of Ex.P.20, True copy of FIR dated 21.03.1994, in which, the Serial Number has been found as 646796 in Page No.55 of the booklet whereas in Page 58 of the booklet, the true copy of FIR, it is found as 69209. Hence, the learned counsel submitted that the true copy found in Page No.58 of the booklet may not be a true copy, since the serial number differ. Further submitted that for one occurrence, there cannot be two F.I.Rs. Hence, the very genesis of the case causes serious doubt on the prosecution case. The learned counsel further contended that P.W.1 speaks about A1 / Paulraj. Further there is vital contradiction with regard to the seizure of the counterfeit currency. In the FIR it has been stated that when the 2<sup>nd</sup> accused and the other Accused were searched, counterfeit currencies were seized. P.W.6, the first investigating officer, who registered the case stated that the 2<sup>nd</sup> accused had disclosed voluntarily about the possession of counterfeit currency. Other than this, there is no other evidence available. The Trial Court had placed reliance only on the 164 Statement of the Victor, which had been spoken to by P.W.3. The VIII Metropolitan Magistrate, who recorded 164 Cr.P.C Statement of

the said Paulraj, other than recording of statement, this witness cannot be a substitute to reproduce the entire statement of said Paulraj. Further, it has been held that the 161 statement recorded by the Police and 164 statement recorded by the Magistrate are not substantial evidence and they can be used only for the purpose to corroborate or contradict statements. The learned counsel relied upon the decision of this Court reported in 2013(2) MLJ (Criminal) 812:2013(8) R.C.R. (Criminal) 1766, R.Palanisamy V. State by Inspector of Police, B-7, Ramanathapuram Police Station, Coimbatore, the decision of High Court of Kerala reported in Manu/KE/0281/2005, Asokan L.S. V. State of Kerala, decision of the Hon'ble Apex Court, reported in 1979 AIR (SC) 1705, M.Mammutti V. State of Karnataka, 1963 MLJ (Criminal) 450, Bhiva Doulu Patil V. State of Maharashtra and 2001 CRL L.J.4696, Umashankar V. State of Chhattisgarh. The currency recovered from the accused, which in normal course, any person can come into possession. The learned counsel further contended that from P.W.3 and 164 statement i.e. Ex.P.10, it is seen that the accused has been falsely implicated in this case.

10.The learned Additional Public Prosecutor would submit that in this case, P.W.6, the Inspector of Police, Anna Nagar Police Station, found the accused in a suspicious manner, arrested the Appellant / A2 and another and seized the counterfeit currencies from their possession. Thereafter, on the orders of the Commissioner of Police, the case was transferred to P.W.7, the Inspector of Police, CBCID. The investigating officer / P.W.7 after thorough investigation, arrested one Victor, who turned as Approver and disclosed about the manner in which the counterfeit currencies had been prepared. Based on the disclosure, M.Os. were seized. After receiving report from the Laboratory, charge sheet came to be filed. The Trial Court on examination of the witnesses and after analysing all their evidence and documents had rightly convicted the accused. The approver in this case could not be examined since he died and the prosecution could not be found fault with it. Accordingly, prays for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant / A2 and the learned Additional Public Prosecutor.

12.Considering the rival submissions and on a perusal of the materials, it is seen that there are seven witnesses. P.W.1 arrested the accused based on the confession statement given by A1 / Paulraj in this case. P.W2 is the VIII Metropolitan Magistrate, who had recorded 164 statement of one Victor / Approver. P.W.3 is the XI Metropolitan Magistrate, who had accorded pardon to the Approver / Victor. P.W.4 is the Head Clerk of the Court, who had forwarded the counterfeit M.Os. for examination. P.W.5 is the independent person, who has shown as a

witness for the arrest and recovery from the accused persons. This witness has not supported the case of the prosecution. Hence, there is no material to prove the seizure and recovery of the notes counterfeit from the appellant. P.W.6 and P.W.7 are the investigating officers.

13.Further, on analysing the evidence of these witnesses and materials, except in the 164 Statement of the said Victor, there is no other material whatsoever is available. Unfortunately, the said Victor / Approver died and he could not be examined as witness in this case. 164 Statement / Ex.P.10 could not be marked through him and hence Ex.P10 is of no value. The Scientific officers who had examined the counterfeit notes have not been examined and their reports have been marked only through the Investigating Officer. Hence, the reports marked from them are of no use.

14.Further, the Trial Court has convicted the accused solely based on Ex.P.10 and the 164 Statement of Victor / Approver. This Court finds that Ex.P.3 is on a wrong premise in the absence of non examination of Victor / Approver, who is the author of 164 Statement / Ex.P10 and no reliance could be placed on it. Since it is of no evidentiary value and in the absence of any corroborative material, no reliance can be placed on the above evidence.

15.On coming to the above conclusion, it is clear that the prosecution has not proved the guilt of the accused beyond reasonable doubt.

16.In the result, this criminal appeal stands allowed. The conviction and sentence imposed on the Appellant / Accused No.2, by the Additional District and Sessions Judge, Fast Track Court-I, Chennai-1 in Sessions Case No.303/09 is set aside. The appellant / Accused No.2 is acquitted. Fine amount if any, paid by the appellant / Accused No.2 shall be refunded to him. Bail bond, if any executed by him and the sureties shall stand terminated. Consequently, connected miscellaneous petition if any is closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

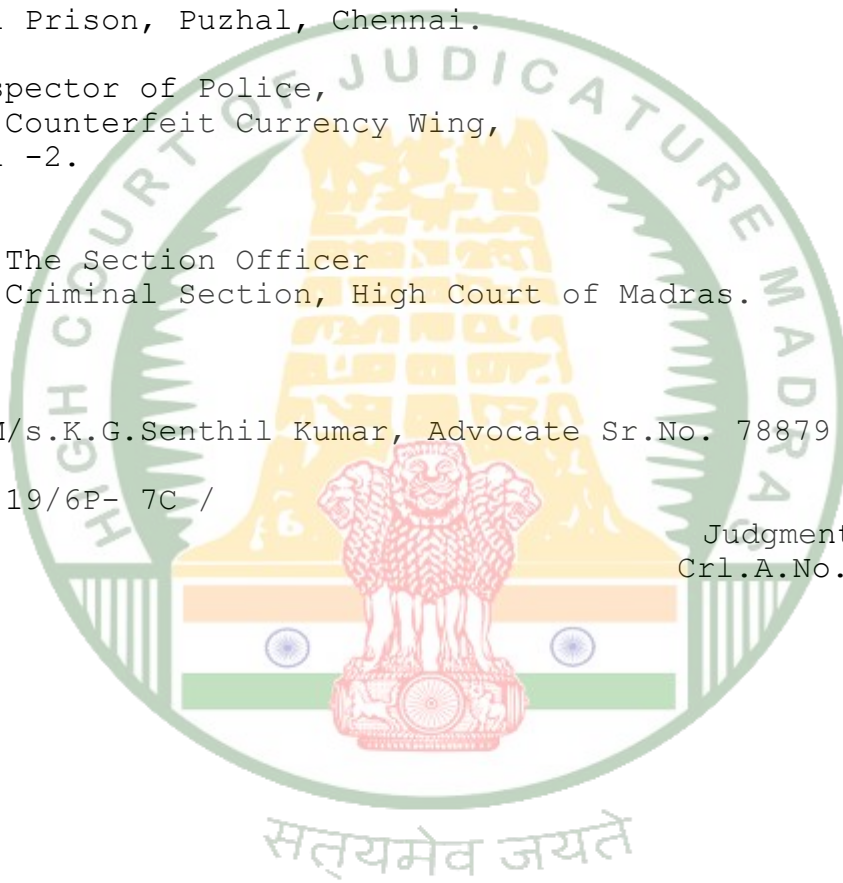
1. The Additional District & Sessions Judge  
Fast Track Court-1, Chennai-1
2. The II Metropolitan Magistrate,  
Egmore, Chennai.
3. The Public Prosecutor  
High Court of Madras
4. The Superintendent of Police,  
Central Prison, Puzhal, Chennai.
5. The Inspector of Police,  
CBCID, Counterfeit Currency Wing,  
Chennai -2.

Copy to : The Section Officer  
Criminal Section, High Court of Madras.

+1 cc to M/s.K.G.Senthil Kumar, Advocate Sr.No. 78879

AKM/16.10.19/6P- 7C /

Judgment made in  
Crl.A.No.374 of 2010



WEB COPY