

Bail Slip.

The Accused viz., Kasim S/o.Kunhabdulla, was enlarged on bail on 25.05.2011 vide CrI.M.P. 1/2011 in CrI.A.307/2011 on the file of the High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.03.2019

Coram::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.307 of 2011

Kasim,
S/o.Kunhabdulla,
Parammal Veedu, Thodanoor,
Vadakara, Kozikod,
Kerala. Appellant/Accused-1

/versus/

State Rep by Inspector of Police,
Mahe Police Station,
Puducherry.
Crime No.76 of 2006 Respondent/Complainant

Prayer:- Criminal Appeal is filed under Section 374 (2) of Cr.P.C, praying against the order of conviction and sentence passed by the II Additional Sessions Judge, Puducherry in S.C.No.13 of 2008 on 27.04.2011 and sentencing him to undergo 3 years R.I and to pay a fine of Rs.1,000/- in default to undergo 3 months S.I.

For Appellant : Mr.S.Swamidoss Monokaran
For Respondent : Mr. Balamurugane
Additional Public Prosecutor
(Pondy)

J U D G M E N T

The appellant before this Court in C.A.No.307 of 2011 is the 1st accused in S.C.No.13 of 2008, on the file of II Additional Sessions Judge, Puducherry. The other accused C.V.Abdulla was also found guilty and convicted by the trial Court preferred appeal in C.A.No.328 of 2011. However, Pending Appeal, he died, hence his appeal is dismissed as abated.

2. The allegation against the appellant herein, as per the charge for which he was tried is that on 15.06.2006, at about 06.15 hours at KTC Petrol Bunk, Mundock, Mahe, the appellant and his associates C.V.Abdulla in furtherance of common intention, to exchange counterfeit currency note of Rs.500/- had purchased petrol in the KCT Petrol Bunk and presented the counterfeit currency of Rs.500/- knowing fully that it is a counterfeit note. Thereby, committed offence punishable under Section 489-B r/w 34 of I.P.C.

3. The case came to be registered against the appellant and the other accused based on the complaint given by one Madhu (PW.1), cashier of KCT Petrol bank. According to the complaint (Ex.P.1) the appellant and C.V.Adbulla came to their Petrol Bunk on 15.06.2006 at 6.15 a.m, Sajan (PW.2) was the pump attender, filled petrol for Rs.50/- to the two wheeler, which was brought by the appellant and his associates. The appellant tendered a five hundred rupees note. Since, Sajan (PW.2) suspected about the genuineness of the currency, he gave that to Madhu (PW.1) to check the same in the machine. On verification, he found the currency is a fake note. Therefore, he took the appellant and C.V.Abdulla along with two wheeler to the police station, gave the complaint to Gireendran (PW.6) who received the complaint, registered First Information Report, seized the counterfeit fake currency note and the two wheeler Bajaj CT 100 bearing registration No.KL 18 C 3660. The Manager of KTC Petrol Bunk also present in the station, while the appellant was handed over to the police by Madhu (PW.1) and Sajan (PW.2). The fake currency note was sent for examination. The Government Press, Nashik has given report that the currency is a fake currency.

4. To prove the charge, the prosecution has examined 8 witness. 6 Exhibits and 2 material objects were marked.

5. The trial Court found both the appellant and the deceased C.V.Adbulla guilty for offence under Section 489-B r/w 34 of I.P.C., Convicted them to undergo 3 years R.I and to pay a fine of Rs.1,000/- in default 3 months S.I.

6. The learned counsel appearing for the appellant would place before this Court a short point for appreciation that PW.1, PW.2 and PW.3 are all alleged to have been employed in the K.C.T Petrol Bunk, have neither produced any document to substantiate the same, nor the Investigating Officer had collected any proof regarding their employment in the K.T.C Petrol Bunk. The ownership of the two wheeler is marked as M.O.2, not been ascertained by the Investigation Officer. There is no evidence to show that the two wheeler was brought by the appellants and for filling the Petrol, they tendered the fake currency of Rs.500/-. The mahazar for seizure does not disclose

the fake currency was seized from their possession. The evidence of PW.1 and PW.2 regarding the possession of the fake currency is contradictory to each other and also contradictory to the evidence of PW.6 Sub-Inspector who has registered the complaint and recovered the fake currency.

7. Contending that lack of evidence to link the fake currency M.O.1 to the appellant entails him to get acquittal. However, the Court below has not properly appreciated the facts and evidence before it. Believing the case of the prosecution that their evidence is trustworthy. Though they all employees of K.C.T. Petrol bunk and interested witnesses, their testimony is credible and trustworthy.

8. The learned Additional Public Prosecutor (Pondicherry) appearing for the respondent/state would submit that having proved the possession, it is for the accused to establish that the possession is not with knowledge.

9. As far as, Section 489-B of I.P.C is concerned, possession of counterfeit currency with intend to use it as genuine is sufficient to convict. In this case, PW.1 the defacto complainant has narrated how the counterfeit currency was attempted to be used as genuine currency by the appellants. PW.2 the pump attender had deposed that M.O.1 fake currency was tendered by A-1 and same was subjected to test in the machine by PW.1 and thereafter, they both went to police station, handed over the accused along with the two wheeler and the fake currency. Thereafter, having proved the fact that the fake currency came from the possession of the appellant. He had used the currency as a genuine currency note, knowing the same to be a counterfeit currency. The ingredient of Section 489-B of I.P.C get fully satisfied.

10. In support of his submission the learned counsel for the appellant would rely upon the judgment of this Court in V.Muthu vs. the State Rep. by Inspector of Police, wherein, the Hon'ble Judge has pointed out the difference between mere possession and conscious possession. To attract Section 489-C of I.P.C., the possession must be a conscious possession on the part of the accused. Having pointed out the difference, the learned Judge has also gone further and had held that in a case of recovery of bulk counterfeit currency note from the possession of the accused and those currency notes have the same number. Failure of the accused to offer any explanation for possession would lead to inference that those currency notes were kept by the accused with intention to use it. In the above said judgment, the learned Judge has also given some illustrative explanation and has held that used currency can be used only for one purpose that is for spending. Therefore, presumption under Section 114 of Indian Evidence Act has to be

applied.

11. Considering the rival submissions and the judgment cited by the Learned Additional Public Prosecutor (Crl.Side) would submit that this Court likes to point out that in the present case what was alleged to have recovered from the appellant is one (five hundred rupees currency) bearing no. 4BC-409298.

12. PW.6, the Sub-Inspector of Police who has registered the First Information Report has deposed that the currency was recovered under the mahazar marked as Ex.P.2. In the said document, which is the printed format for the Property Search and Seizure, in the Column-5 is meant for the Person from whom seized and the details of the person, its conspicuous blank unfilled.

13. The learned Additional Public Prosecutor (Pondicherry) for the respondent/state would submit that on the 3rd page of the format PW.1 has signed. PW.2 and PW.3 has also signed as witnesses, name of PW.2 and PW.3 are shown as witnesses in column 6 of the said format. PW.1 has signed, which indicates that the fake currency tendered by the appellant was recovered by the police from the possession of PW.1. But, the evidence of PW.3 who is the Manager of K.T.C petrol bunk in his chief examination has deposed that one bike and fake note was recovered from Kasim (appellant) and he signed in the mahazar. Sajjan (PW.2) the pump attender has deposed that he received the fake currency from Kasim suspected it to be a fake currency so, he give it to Madhu (PW.1) to check the currency note. Madhu (PW.1) verified the currency through the machine and found it to be fake. PW.1 has not whispered how he verified the genuineness or otherwise of the said currency. The presence of PW.3 during the said transaction not whispered by PW.1 and PW.2. However, Padmanabhan (PW.3) would say that he was in the petrol bunk at 6.30 a.m. He saw both the accused at the police station. From the deposition of Vireedharan (PW.6), the Sub-Inspector of Police who has registered the complaint. Nandagopal (PW.7) the Superintendent of Police was taken up the investigation. Rajasankar (PW.8) Inspector of Police was completed the investigation and filed final report, put together does not indicate, even an iota material to show the respondent has conducted any investigation at all in this case. Vireedharan (PW.6) who has registered the complaint, seized the fake currency and arrested the accused persons has not said anything about the investigation. Nandagopal (PW.7) was then Inspector of Police at Mahe Police Station also not whispered anything regarding his role in the investigation, except receiving the file from SHO on 23.10.2006 and handing over the case file to one Shanmuga Sundaram, on 03.02.1997. Rajasankar (PW.8), Inspector of Police who has filed the final report admits in the cross examination that he has not conducted any further

investigation. He has not recorded the statement of any of the witnesses during his investigation. Left with the testimony of PW.1, PW.2 and PW.3, which are contradictory to each other as pointed above and the seizure mahazar which is conspicuously blank to the information from whom the fake currency was seized. Coupled with the fact that the respondent police has not done any investigation regarding the possession of the fake currency, source of the fake currency and whether the appellant are really had the fake currency with knowledge and intention.

14. Further, the learned Additional Public Prosecutor (Pondicherry) has argued that there is no animosity between the Investigation agency and the accused person to foist a case. Therefore, the recovery of fake currency from the possession of the appellant has to be held with knowledge and used it as genuine. Mere absence of animosity is not sufficient to hold the accused person guilty. A competence to conducted the investigation in a complete manner is more important in a case of this nature. The negligence of the investigation agency to probed into the source of currency and failure to record the statement of the accused, to ascertain whether he had the currency in possession with knowledge that it is a counterfeit currency or not itself leads to grave doubt.

15. This Court is unable to hold the judgment of the trial Court is legal and passed in accordance with law. Therefore, the appellant is entitled for an acquittal, due to want of evidence. Accordingly, the Criminal Appeal is Allowed. The conviction and sentence passed by the trial Court is set aside. Fine amount paid if any, shall be refunded to the appellant. Bail Bond executed shall stand discharged.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

bsm

To

1. The II Additional Sessions Judge, Puducherry.
2. The Principal Sessions Judge, Puducherry.
3. The Inspector of Police, Mahe Police Station, Puducherry.
4. The Additional Public Prosecutor, (Pondy), High Court, Madras.
5. The Section Officer, Criminal Section, High Court, Madras.

+1 CC to M/s.S.Swamidoss Manokaran, Advocate sr 22272.

Criminal Appeal No.307 of 2011

CP(CO)

SP(10/04/2019)