

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.08.2018

Pronounced on : 09.09.2019

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.Nos.87 of 2011 & 556 of 2016

Ramachandran ...Petitioner in Crl.R.C.No.87/2011
Venkatesan @ Venkatesh ...Petitioner inCrl.R.C.No.556/2016

Vs.

State by
The Inspector of Police,
Belukurichi Police Station,
Namakkal Taluk,
Namakkal District. Respondent in both the RCs
(Crime No.206/2005)

Prayer in both the RCs: These Criminal Revision Cases are filed under Section 397 read with Section 401 of Cr.P.C. to call for records of the judgment dated 23.08.2010 passed in C.A.No.2 of 2009 by the learned Additional District and Sessions Judge, Fast Track Court, Namakkal, confirming the judgment of conviction and sentence dated 24.11.2008 passed in S.C.No.105 of 2006 by the learned Assistant Sessions Judge, Rasipuram, Namakkal District, and set aside the same by allowing this revision.

For Petitioners: Mr.P.Rathinavel in R.C.87/2011
Mr.B.Vasudevan in R.C.556/2011

For Respondent : Mr.R.Ravichandran
Government Advocate (Crl.Side)
in both the RCs

COMMON ORDER

These criminal revision cases have been filed seeking to set aside the concurrent judgments of conviction made by both the Courts below.

2 It is seen that the respondent police registered a case against the revision petitioners in Crime No.206 of 2005 for the offence under Section 489(b) r/w 34 of IPC and after investigation laid a charge sheet before the learned Judicial Magistrate, Rasipuram, and the same was taken on file in

P.R.C.No.4 of 2006 and since the offence charged against the petitioners was triable only by the Court of Sessions, the case was committed to the learned Principal District and Sessions Judge, Namakkal, which was taken on file in S.C.No.105 of 2006 and the same was made over to the learned Assistant Sessions Judge, Rasipuram, for disposal. The learned Assistant Sessions Judge, Rasipuram, after trial, found the petitioners/A1 & A2 guilty for the offence under section 489(b) r/w 34 of IPC and by judgment dated 24.11.2008 convicted both the petitioners/A1 & A2 and sentenced them to undergo imprisonment for a period of five years each with fine of Rs.1000/- each, in default, to undergo imprisonment for a further period of three months each. Aggrieved against the same, the petitioners had preferred an appeal in C.A.No.2 of 2009 and the learned Additional District and Sessions Judge, Fast Track Court, Namakkal, after hearing both the counsel, by judgment dated 23.08.2010, dismissed the appeal and confirmed the judgment of conviction recorded by the trial Court. Challenging the concurrent judgment of conviction, the petitioners are now before this Court with the present criminal revision cases.

3 Both the criminal revision cases are arising out of a common judgment of conviction and hence both the revisions are taken up together and disposed of by this common order.

4 The learned counsel appearing for both the petitioners would submit that first of all charge under Section 489(b) against the petitioners was not proved by the prosecution. P.W.1, the defacto complainant has given complaint Ex.P.1 stating that A1 met him on 05.06.2005 at 9.00 and instructed to arrange Rs.10,000/- and on 06.06.2005 A1 along with A2, the petitioners herein met P.W.1 with fake notes amounts to Rs.30,000/- But, prosecution has recovered only five fake currency notes from A2. Therefore, version of P.W.1 at the earliest point of time is contradicted by the recovery made by the prosecution. There was delay in lodging the complaint, it is stated by P.W.1 that A1 met him one week prior to 06.06.2005 and on 05.06.2005, he lodged complaint on 06.06.2005 at 1.15 p.m. Further more, P.W.1 did not support the cases of the prosecution and P.Ws.1 to 3 turned hostile. To support his contention, the learned counsel appearing for the petitioners has relied on the decision rendered by the Hon'ble Supreme Court reported in CDJ 2018 MHC 2672 (Sadha Sivam & Others vs. State of Tamilnadu) and 1979 AIR (SC) 1705 (M.Mammutti vs. State of Karnataka). Both the Courts below had failed to consider the infirmities and contradictions in the evidence of P.W.4 to 8 and 11 regarding arrival at scene of occurrence and arrest of the accused and the fact that the defacto complainant himself has disowned his complaint, and erroneously convicted these petitioners, which

warrants interference.

5 The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that A1 met P.W.1/defacto complainant on 05.06.2010, and instructed to arrange Rs.10,000/-. Thereafter, on 06.06.2010, A1 along with A2, who are the petitioners herein, met P.W.1 with fake currency notes amounting to Rs.30,000/- and since P.W.2 do not want to indulge in trafficking, made complaint against the petitioners/A1 & A2 and based on the complaint/Ex.P1, respondent police went to the scene of occurrence and caught the petitioners and recovered the fake currency notes, which were in possession of A2. Once fake notes has been recovered from the accused, it is for him to explain as to how he was in possession of fake currency notes. Non recovery of entire fake currency notes is not fatal to the case of the prosecution, even one single fake currency note has been recovered from the accused, it should be established that he was not in possession of the fake note with conscious and knowledge. Hence even possession of single fake currency note is an offence, unless it is proved that the accused was not aware of the fact that the currency note recovered from him is fake. Even though, P.W.1 had given complaint and subsequently not supported the case of the prosecution for one or other reason best known to him only, P.W.1 admitted his signature found on Ex.P1 and based on the same recovery of fake currency notes was also effected. Therefore, conviction of the petitioners recorded by the trial Court and as confirmed by the lower appellate Court does not call for any interference.

6 Heard the learned counsel appearing on either side and perused the materials available on record.

7 It is seen that P.W.1 is the defacto complainant and he lodged the complaint before the respondent police and based on the complaint/Ex.P1, the respondent police recovered the fake currency notes M.Os.2 & 5 and also arrested the petitioners/A1 & A2. P.W.4, Village Administrative Officer and P.W.5 Assistant of Village Administrative Officer, had deposed that while they were going to Revenue Divisional Office, Rasipuram, had seen the accused and the respondent police enquiring the accused and they have witnessed the recovery made by the prosecution. Even though, as stated by the learned counsel for the petitioner that P.W.1 turned hostile, P.W.1 in his complaint Ex.P6, has clearly narrated the event that A1 met P.W.1 and instructed to arrange Rs.10,000/- and he would give Rs.30,000/- fake currency notes and on 05.06.2005 again A1 met P.W.1 and shown two currencies each Rs.100/- and asked P.W.1, which one is fake, for which P.W.1 replied that he could not find out. A1 told P.W.1 that he would come tomorrow with counterfeit notes and instructed to

arrange Rs.10,000/-. Accordingly A1 along with A2 came to the scene of occurrence with counterfeit currency notes and as complained by P.W.1 the respondent police went to the place of occurrence and recovered the fake currencies from the accused, which was also witnessed by P.W.4 and P.W.5. From the evidence of P.W.4, P.W.5 and P.W.11, prosecution has proved recovery of counterfeit currency notes from the accused. P.W.1 has admitted the signature found in the complaint Ex.P6. Therefore, it is for the accused to explain as to how they were in possession of fake currency notes and the accused had failed to prove their defence. The citations referred to by the learned counsel appearing for the petitioner is not applicable to the present case on hand.

8 The trial Court has rightly appreciated the evidence of prosecution and convicted the petitioner and the lower appellate Court, being a final Court of fact finding, has re-appreciated the evidence independently and confirmed the conviction recorded by the trial Court. This Court, while exercising revisional jurisdiction, cannot exercise power of appellate Court and re-appreciate entire evidence and substitute its own views, unless there is perversity in appreciating the evidence by the Courts below while deciding the case. On reading of the entire records and the judgments of both the Courts below, this Court does not find any perversity and the same does not call for any interference.

9 In the result, both the criminal revision cases are dismissed and the trial Court is directed to secure the petitioners/A1 & A2 to serve remaining period of sentence, if any.

-s/d-

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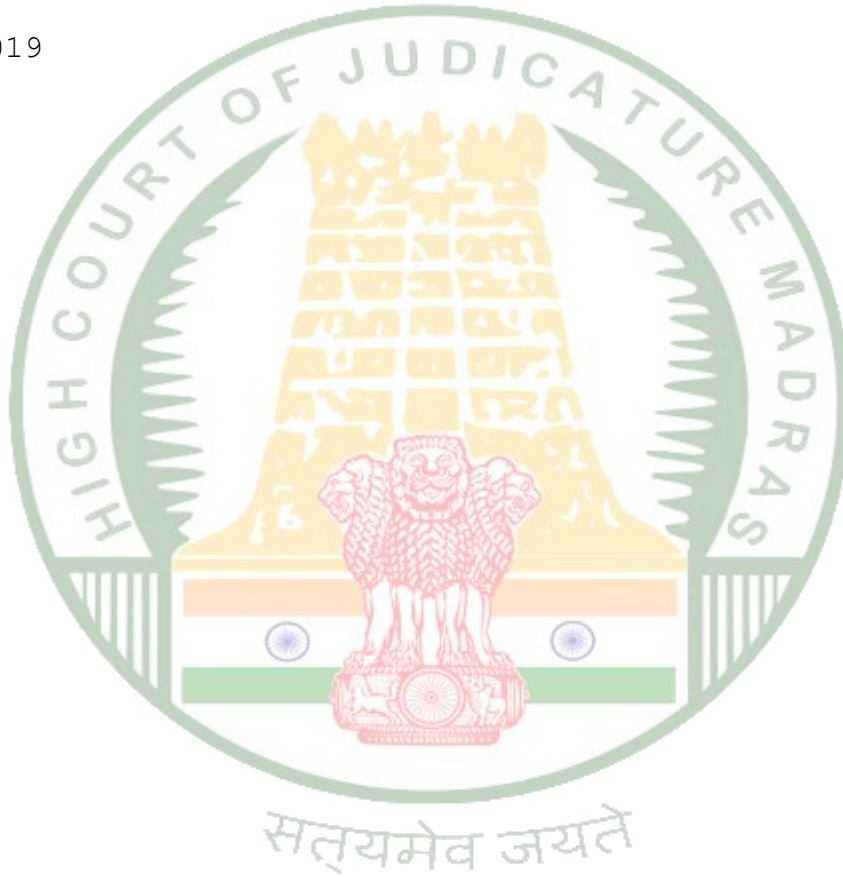
1. The Additional District and Sessions Judge, Fast Track Court, Namakkal.
2. The Assistant Sessions Judge, Rasipuram, Namakkal District.
3. The Public Prosecutor, High Court of Madras.
4. The Inspector of Police, Belukurichi Police Station, Namakkal Taluk, Namakkal District.

5. The Section Officer
Criminal Section(Records)
High Court Madras

+1 cc to M/s.P.Rathnavel Advocate sr77627

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