

BAIL SLIP

The Appellants herein/Petitioner/A5 in Crl.R.C.No.38/2013 viz., Subbaiyan @ Vathu Kozhi, S/o.Thandava Gounder, was released on bail vide Court order dated 12.03.2013, made in M.P.No.3 of 2013 in Crl.R.C.38/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.Nos.1368, 1142 of 2012 and 38 of 2013
M.P.Nos.1, 1, 2 & 3 of 2012

1. Kandasamy
2. Krishnan
3. Subbaiyan @ Vathu Kozhi ...Petitioners/A1,A2&A5 in
Crl.R.C.1368/12

P.Kannan ...Petitioner/A4 in
Crl.R.C.1142/2012

Subbaiyan @ Vathu Kozhi ...Petitioner/A5 in
Crl.R.C.38/2013

Vs.

State represented by
The Inspector of Police,
CBCID, Salem.
(Cr.No.1 of 2006)

...Respondent in all the RCs

Prayer in all the Revisions: These Criminal Revisions are filed under Sections 397 and 401 of Code of Criminal Procedure to call for records pertaining to the judgment dated 30.07.2012 made in C.A.Nos.40 & 41 of 2012 by the learned III Additional District and Sessions Judge, Salem, confirming the judgment dated 08.03.2012 made in S.C.No.38 of 2008 by the Assistant Sessions Judge and Chief Judicial Magistrate, Salem and set aside the same.

For Petitioners : Mr.C.Prabakaran in R.C.1368 &
1142/2012
: Mr.R.Sankarasubbu in 38/2013

For Respondent : Mr.T.Shanmugarajeswaran
Government Advocate (Crl.Side)
in all the RCs

COMMON ORDER

All the above criminal revisions have been filed seeking to set aside the concurrent judgment of conviction made by both the Courts below.

2 Since all the accused had been convicted for the same crime number and the matter is arising out of a common judgment of conviction, all the revision cases have taken up together and disposed of by this common order.

3 For the sake of the convenience, the petitioners are referred to as per their array of rank in the calendar case.

4 Petitioners in Crl.R.C.No.1368 of 2012 are A1, A2 and A5, petitioner in Crl.R.C.No.1142 of 2012 is A4 and petitioner in Crl.R.C.No.38 of 2013 is A5. It is stated by the learned Government Advocate (Crl.Side) appearing for the respondent police that A1 to A4 had already undergone the sentence imposed on them by the Courts below and A5 alone has to undergo the sentence.

5 Therefore, revision in Crl.R.C.No.1368 of 2012 filed by A1, A2, who are 1st and 2nd petitioners is dismissed and also since A5, who is 3rd petitioner had also filed a separate revision in Crl.R.C.No.38 of 2013, revision against A5, who is 3rd petitioner is also dismissed. Further Crl.R.C.No.1142 of 2012 filed by A4 is also dismissed for the reason already stated above that he already undergone the sentence imposed on him. In fine, Crl.R.C.Nos.1368 and 1142 of 2012 are dismissed.

6 According to learned counsel appearing for the petitioner in Crl.R.C.No.38 of 2013, who is A5, there is no evidence against A5 to convict him under Section 489(c) of IPC. Mere possession of fake notes would not suffice to convict the accused, and knowledge of possession of fake notes has to be proved by the prosecution. Further, prosecution has failed to examine any independent witness to prove its genuinity of the case. To support his contentions, the learned counsel relied on the following decisions of the Hon'ble Supreme Court reported in

1. (2016) 14 SCC 729 (K.A.Kotrappa Reddy and another vs. Rayar Manjunatha Reddy)
2. 1996 (4) Crimes 233 (D.K.Basu vs. State of West Bengal)
3. 1979 AIR (SC) 1705 (M.Mammutti vs. State of Karnataka)
4. 2001(4) Crimes 83 (Umashanker vs. State of Chhattisgarh)
5. (1995) 4 Scc 255 (Pradeep Narayan Madgaonkar and others vs. State of Maharashtra)

and also the decision rendered by the Punjab & Haryana High Court in Criminal Appeal No.549 of 1979 (Bachan Singh and

another vs. State of Punjab) and stated that both the Courts below had erred in holding the petitioner/A5 guilty of offence charged against him and erroneously convicted, which warrants serious interference.

7 Per contra, learned Government Advocate (Crl.Side) would submit that fake currency notes are recovered from A5 and Mahazar witnesses have also supported the case of the prosecution. Both the Courts below by appreciating the evidence of prosecution witnesses in the right manner, had convicted the accused and hence there is no reason to interfere with the same.

8 Heard the learned counsel appearing on either side in Crl.R.C.No.38 of 2013 and perused the materials available on record.

9 On reading of the evidence of P.Ws.1, 2, 3 and 8, it clearly reveals that prosecution has proved its case. Prosecution has proved that the fake currency notes were recovered from the accused and Mahazar witnesses have also clearly spoken about the same. The authorities cited by the learned counsel are not helpful to his case. The trial Court had rightly appreciated the evidence of prosecution witnesses and convicted the accused and the lower appellate Court, being a final Court of fact finding, re-appreciated the entire evidence and confirmed the conviction recorded by the trial Court. This Court, while exercising revisional jurisdiction, cannot re-appreciate entire evidence and substitute its own view, unless there is any perversity in appreciating the evidence by the Courts below.

10 It is pertinent to refer the judgment of the Hon'ble Supreme Court in the case of State of Kerala Vs. Putthumana Illath Jathavedan Namboodri, reported in AIR 1999 SC 981 held as follows:

"... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of Supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an Appellate Court nor can it be treated even as a second Appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as

well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice..."

11 This Court does not find any perversity in appreciating the evidence by the Courts below and the same does not call for any interference. There is no merit and substance in the criminal revision case and the same is dismissed. Consequently connected miscellaneous petitions are closed. The trial Court is directed to secure the custody of the petitioner/A5 immediately to undergo the remaining period of sentence, if any.

cgi

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The III Additional District and Sessions Judge, Salem.
2. The Assistant Sessions Judge and Chief Judicial Magistrate, Salem.
3. The Public Prosecutor, High Court of Madras.
4. The Inspector of Police, CBCID, Salem.
5. The Judicial Magistrate No.II, Salem.

Copy to:-

The Section Officer, सत्यमेव जयते
Criminal Section,
High Court, Madras - 104.

WEB COPY
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M.P.Nos.1, 1, 2 & 3 of 2012

Kak (27/09/2019)