



BAIL SLIP

1. Palanisamy, S/o. Lakshmanan, male, age about 60 years / 2014 and 2, Kaalai, S/o. Alagumalai, aged about 59 years / 2014 were released on bail vide Court Order dated 26.02.2014 and 10.06.2014 made in MP(MD)Nos.1 and 1 of 2014 in CRL A(MD)Nos.67 of 2014 and 101 of 2014 respectively.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.10.2019

CORAM:

THE HONOURABLE MR. JUSTICE B. PUGALENDHI

Crl.A(MD)Nos.67 and 101 of 2014

Palanisamy ... Appellant/A1 in Crl.A.(MD).No.67 of 2014
Kaalai ... Appellant/A2 in Crl.A.(MD).No.101 of 2014

Vs.

The State represented by
The Inspector of Police,
Bodi Town Circle Police Station,
Theni District.
(Crime No.406 of 2002)

... Respondent in both Crl.As.

COMMON PRAYER: These Criminal Appeals are filed under Section 374 (2) of Cr.P.C., to set aside the conviction and sentence imposed by the Assistant Sessions and Chief Judicial Magistrate Court, Theni in S.C.No.69 of 2012 on 08.01.2014 and allow these criminal appeals.

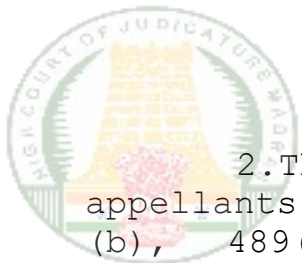
For Appellant : Mr.M.Jothibas
in Crl.A.(MD).No.67 of 2014

For Appellant : Mr.A.Saravanan
in Crl.A.(MD).No.101 of 2014

For Respondent : Mr.K.K.Ramakrishnan
Additional Public Prosecutor
(in both Crl.As.)

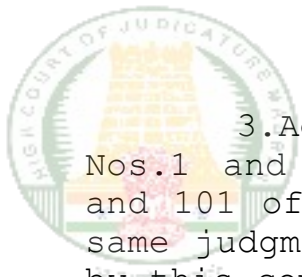
COMMON JUDGMENT

These appeals are arising out of conviction and sentence imposed by the Assistant Sessions and Chief Judicial Magistrate Court, Theni, against the appellants in S.C.No.69 of 2012 dated



2. The Trial Judge, by order dated 08.01.2014, found the appellants guilty for the offences punishable under Sections 120 (b), 489(b) and 489(c) IPC and convicted and sentenced them as follows:

Accused	Penal Provisions	Punishment
A1	120 (b) IPC	(i) To undergo six months rigorous imprisonment with fine of Rs.1000/-, in default to undergo two months rigorous imprisonment.
	489 (c) IPC	(ii) To undergo seven years rigorous imprisonment with fine of Rs.1,000/-, in default to undergo one year rigorous imprisonment.
A2	120 (b) IPC	(i) To undergo six months rigorous imprisonment with fine of Rs.1000/-, in default to undergo two months rigorous imprisonment.
	489 (c) IPC	(ii) To undergo seven years rigorous imprisonment with fine of Rs.1,000/-, in default to undergo one year rigorous imprisonment.
	489 (b) IPC	(iii) To undergo ten years rigorous imprisonment with fine of Rs.3,000/-, in default to undergo two years rigorous imprisonment.



3. Aggrieved by the said conviction and sentence, accused Nos.1 and 2 preferred the criminal appeals in CrI.A.(MD).Nos.67 and 101 of 2014. Since both the criminal appeals arise out of the same judgment, the matters are taken up together and disposed of by this common order.

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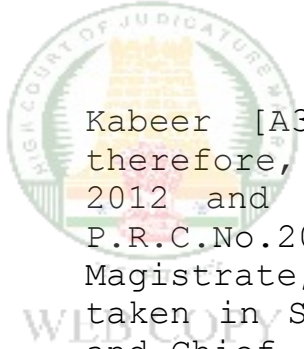
4. The case of the prosecution in brief is as follows:

On 22.09.2002, P.W.5/the Inspector of Police, Bodi Town Police Station, has received a secret information from P.W.1/Satheesh Kumar, Sub Inspector of Police, P.C.Patti Police Station and P.W.2/Subbiah, Sub Inspector of Police, P.C.Patti Police Station that these appellants were found under suspicious circumstances near Malligai Wines, Mamarazar Bazar, Bodi Town. Based on that information, P.W.5 arrested the appellants at about 10.40 a.m in the presence of P.Ws.1 to 3. The appellants gave a confession statement to P.W.5/Kabilan, the Inspector of Police, P.C.Patti Police Station that the absconding Accused No.3 namely Kabeer came from Thiruvananthapuram, Kerala, has met them and the first accused has received 24 bundles of 10 rupees counterfeit currency notes and handed it over to the Accused No.2. Thereafter, on 22.09.2002 at about 10.40 a.m both the appellants have taken out one bundle, divided and attempted to circulate the same in the market and at that time the police has arrested them.

5. Based on the confession statement of A1, P.W.5 recovered 43 number of 10 rupees counterfeit currency [M.O.1 Series] from Accused No.1 / Palanisamy in the presence of witnesses P.Ws.1 to 3 under cover of Mahazer Ex.P.2. Thereafter, the Inspector of Police [P.W.5] recorded the confession statement of Accused No.2 and pursuant to his statement, he recovered 37 number of 10 rupees counterfeit currency notes from the Accused No.2 in the presence of witnesses P.Ws.1 to 3 under cover of Mahazer Ex.P.4. The Inspector of Police [P.W.5] has also taken 23 bundles of 10 rupees counterfeit currency notes, which were buried in the house of the Accused No.2 and the same was recovered in the presence of the P.Ws.1 to 3 under the cover of Mahazer Ex.P.5 [M.O.3 series]. Based on the same, the Inspector of Police [P.W.5] registered a case against the appellants/accused in Crime No.406 of 2002 for the offences under Sections 489(b) and 489(c) of IPC and the FIR is marked as Ex.P.3 and thereafter, he also examined the witnesses P.Ws.1 to 3 and recorded their statements. He has also sent the currency notes M.O.1 series, M.O.2 series, M.O.3 series to the Forensic Lab, Chennai to find out the genuineness of the notes. The further investigation was conducted by the Inspector of Police/Kulam [P.W.6] from 10.04.2003 and he has also made an attempt to arrest the Accused No.3, but his effort ended in vain. After verifying the statement recorded and after obtaining report from the forensic lab, Chennai, he filed the final report as

<https://hcrs.csrts.gov.in/hcrs/npse>

seized from the appellants [Accused Nos.1 and 2] and also against one



Kabeer [A3]. The accused No.3 could not be traced out and therefore, the case as against A3 was split up in P.R.C.No.18 of 2012 and the case as against the appellants was proceeded in P.R.C.No.20 of 2005. The learned District Munsif cum Judicial Magistrate, Podinayakkannur committed the case and the same was taken in S.C.No.69 of 2012 on the file of the Assistant Sessions and Chief Judicial Magistrate Court, Theni.

6.During the trial on the side of the prosecution, six witnesses were examined and eight exhibits were marked. The recovered money were marked as M.O.1 to M.O.3 series.

7.The available witnesses from the prosecution evidence are as follows:-

(i).P.W.1 is the Sub-Inspector of Police, P.C.Patti police Station, who got secret information and informed about the accused to P.W.5.

(ii).P.W.2 is the Sub-Inspector of Police, P.C.Patti Police Station, who arrested the second accused in his house and handedover him to P.W.5.

(iii).P.W.3 is the Village Administrative Officer. He was also present at the time of arrest and recovery.

(iv).P.W.4 is the Scientific Officer, Forensic Lab, Chennai. He filed report about M.Os.1 to 3 series.

(v).P.W.5 is the Inspector of Police, Bodi Town Police Station, who conducted preliminary enquiry.

(vi).P.W.6 is the, the Inspector of Police, Bodi Taluk Police Station, who conducted further investigation and filed a final report.

8.After the prosecution evidence was closed, the incriminating materials were put to the accused under Section 313 Cr.P.C and the accused denied the same. No witness was examined on their side. On appreciation of oral and documentary evidence, the trial Court found the appellants/accused Nos. 1 and 2 guilty, convicted and sentenced them as stated above. Aggrieved by the same, the present appeals have been preferred.

9.Heard Mr.M.Jothibas, learned counsel appearing for the appellant in Crl.A.(MD).No.67 of 2014, Mr.A.Saravanan, learned counsel appearing for the appellant in Crl.A.(MD).No.101 of 2014 and Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor appearing for the respondent police.

10.The learned counsel appearing for the appellants in both the appeals have raised following points in support of their case.

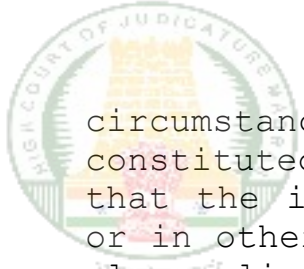


10.1.Mr.Jothibasu, learned counsel appearing for the appellant would contend that the case cannot be sustained at all, since the complainant and investigation officer are one and the same. Therefore, based on the law laid down by the Honourable Supreme Court in the case of **Mohan Lal Vs. The State of Punjab** reported in **2018 SAR (Criminal) 990**, the appellants are entitled for acquittal. He further submitted that the Inspector of police [P.W.2], who arrested the accused and recovered the alleged counterfeit notes turned hostile and he did not support the case of the prosecution. Moreover, though arrest and search were made in a busy place, no independent witness was examined.

10.2.Mr.A.Saravanan, learned counsel appearing for the appellant in CrI.A.(MD).No.101 of 2014 would submit that the entire case is based on the counterfeit currency notes circulated by the Accused No.3. But, the Accused No.3 has not been identified and he is yet to be arrested and the case is pending as against the Accused No.3 at the stage of P.R.C.No.18 of 2012 before the Judicial Magistrate, Podinayakanur, without arresting the Accused No.3, the allegation that counterfeit currency notes have been prepared by the Accused No.3 and circulated through the Accused Nos.1 and 2 cannot be sustained. The Accused Nos.1 and 2 are not aware that M.O.1 to 3 Series are counterfeit one. He would also submit that there is no bad antecedent as against the appellants and they have not been involved in any other case. Therefore, the learned counsel pray for interference.

11.Per contra, the learned Additional Public Prosecutor vehemently opposed the stand of the appellants and submitted that though the case was registered and the preliminary investigation was conducted by the Inspector of Police, Bodi Town Police Station, [P.W.5], the final report was filed by the the Inspector of Police, Bodi Taluk Police Station, [P.W.6] . He also submitted that the law laid down by the Supreme Court in the case of **Mohan Lal Vs. The State of Punjab** cannot be applied to this case and has relied upon three other judgments of the Honourable Supreme Court that the ratio laid down in **Mohan Lal Vs. The State of Punjab** acts only prospectively and cannot be applied retrospectively.

12.The learned Additional Public Prosecutor, by referring the circumstances and the number of counterfeit currency notes recovered from the Accused, would substantiate that sufficient number of counterfeit currency notes have been recovered from the appellants and the appellants/accused Nos.1 and 2 ought to have explained the possession of the notes with them. The number of counterfeit currency notes found in a man's possession and the



circumstances in which they were so found may, by themselves, be constituted to be sufficient ground for drawing the inference that the intention of the accused was to use the same as genuine or in other words, they offered no explanation in this regard. He also relied upon the judgment of this Court reported in **AIR 1939 Madras 96** in the case of **the Public Prosecutor Vs. Rowthula Kondalrao**. Further, he also relied upon the decision of the Honourable Supreme Court reported in **1956 S.C 488 (AIR V 43 C 84 July)** in the case of **Basdev Vs. State of Pepsu** and submitted that the accused were aware of the consequence of the act. According to the learned Additional Public Prosecutor, a person must have reason to believe if the circumstances are such that a reasonable man would, by probable reasoning, conclude or infer regarding the nature of the thing concerned, such circumstances need not necessarily be capable of absolute conviction or inference; but it is sufficient if the circumstances are such creating a cause to believe by chain of probable reasoning leading to the conclusion or inference about the nature of the thing. These two requirements i.e. "Knowledge" and "Reason to believe" have to be deduced from various circumstances in the case. In support of his contention, he also relied upon the decision of the Honourable Supreme Court reported in **AIR 1993 SC 1167** in the case of **Joti Parshad Vs. State of Haryana**, wherein, the Honourable Supreme Court has held as follows:-

"3.The possession and sale of various counterfeit stamps by the appellant who was a stamp vendor is beyond dispute. Then the important question is whether he had knowledge or reason to believe that the stamps which he had in possession and was selling, were counterfeit of the stamps issued by the Government.

4.Under the Indian penal law, guilt in respect of almost all the offences is fastened either on the ground of "intention" or "knowledge" or "reason to believe". We are now concerned with the expressions "knowledge" and "reason to believe". "Knowledge" is an awareness on the part of the person concerned indicating his state of mind. "Reason to believe" is another facet of the state of mind. "Reason to believe" is not the same thing as "suspicion" or "doubt" and mere seeing also cannot be equated to believing. "Reason to believe" is a higher level of state of mind. Likewise "knowledge" will be slightly on higher plane than "reason to believe". A person can be supposed to know where there is a direct appeal to his senses and a person is presumed to have a



reason to believe if he has sufficient cause to believe the same. Section 26 I.P.C. explains the meaning of the words "reason to believe" thus:

26. "Reason to believe" - A person is said to have "reason to believe" a thing, if he has sufficient cause to believe that thing but not otherwise.

In substance what it means is that a person must have reason to believe if the circumstances are such that a reasonable man would, by probable reasoning, conclude or infer regarding the nature of the thing concerned. Such circumstances need not necessarily be capable of absolute conviction or inference; but it is sufficient if the circumstances are such creating a cause to believe by chain of probable reasoning leading to the conclusion or inference about the nature of the thing. These two requirements i.e. "knowledge" and "reason to believe" have to be deduced from various circumstances in the case. In the context of the circumstances obtaining in the instant case namely that the appellant admittedly was a licensed stamp vendor and he was found in possession of counterfeit stamps, the explanation of the accused also becomes relevant and important in assessing and appreciating whether he had such knowledge or reason to believe that the stamps were counterfeited. Admittedly he used to purchase stamps from the treasury and all such transactions are duly recorded in the official registers. There is absolutely no material whatsoever to show that the counterfeit stamps were in fact purchased by him from the treasury. A bare allegation by way of an explanation by the accused-appellant that he purchased all the stamps including the counterfeit ones from the treasury appears on the face of it to be false, as he has neither produced registers maintained by him nor did he make even an effort to summon the treasury records. There is no material whatsoever even to probablise such a plea. In these circumstances the only inference that can be drawn is that he had "knowledge" and "reason to believe" that the stamps which he had in his possession and which he was selling or offering to sell, were counterfeit ones. These ingredients of the two provisions of law are fully established. Therefore the convictions are correct. The offence also is a serious one and the sentence awarded is not excessive. The appeal is therefore dismissed.



13. Heard the learned Counsel appearing for the appellants in both appeals and the learned Additional Public Prosecutor appearing for the respondent/State.

14. The main contention of the learned counsel appearing for the appellants is that the complainant as well as the investigation officer in this case are one and the same and therefore, the conviction as against these appellants cannot be sustained. In the case of **Mohan Lal Vs. The State of Punjab** reported in **2018 SAR (Criminal) 990**, a Full Bench of the Honourable Supreme Court, has held as follows:-

"14. In a criminal prosecution, there is an obligation cast on the investigator not only to be fair, judicious and just during investigation, but also that the investigation on the very face of it must appear to be so, eschewing any conduct or impression which may give rise to a real and genuine apprehension in the mind of an accused and not mere fanciful, that the investigation was not fair. In the circumstances, if an informant police official in a criminal prosecution, especially when carrying a heavy burden of proof, makes the allegations, is himself asked to investigate, serious doubts will naturally arise with regard to his fairness and impartiality. It is not necessary that bias must actually be proved. It would be illogical to presume and contrary to normal human conduct, that he would himself at the end of the investigation submit a closure report to conclude false implication with all its attendant consequences for the complainant himself. The result of the investigation would therefore be a foregone conclusion.

25. In view of the conflicting opinions expressed by different two judge Benches of this Court, the importance of a fair investigation from the point of view of an accused as a guaranteed constitutional right under Article 21 of the Constitution of India, it is considered necessary that the law in this regard be laid down with certainty. To leave the matter for being determined on the individual facts of a case, may not only lead to a possible abuse of powers, but more importantly will leave the police, the accused, the lawyer and the courts in a state of uncertainty and confusion which has to be avoided. It is therefore held that a fair investigation, which is



but the very foundation of fair trial, necessarily postulates that the informant and the investigator must not be the same person. Justice must not only be done, but must appear to be done also. Any possibility of bias or a predetermined conclusion has to be excluded. This requirement is all the more imperative in laws carrying a reverse burden of proof.

26. Resultantly, the appeal succeeds and is allowed. The prosecution is held to be vitiated because of the infraction of the constitutional guarantee of a fair investigation. The appellant is directed to be set at liberty forthwith unless wanted in any other case."

15. However, a subsequent Full Bench of the Honourable Supreme Court in the case of **Varinder Kumar Vs. The State of Himachal Pradesh** reported in **2019 SCC Online SC 170**, has held as follows:

'12. Individual rights of the accused are undoubtedly important. But equally important is the societal interest for bringing the offender to book and for the system to send the right message to all in the society - be it the lawabiding citizen or the potential offender. 'Human rights' are not only of the accused but, extent apart, also of the victim, the symbolic member of the society as the potential victim and the society as a whole.

15. Societal interest therefore mandates that the law laid down in Mohan Lal (supra) cannot be allowed to become a spring board by an accused for being catapulted to acquittal, irrespective of all other considerations pursuant to an investigation and prosecution when the law in that regard was nebulous. Criminal jurisprudence mandates balancing the rights of the accused and the prosecution. If the facts in Mohan Lal (supra) were telling with regard to the prosecution, the facts in the present case are equally telling with regard to the accused. There is a history of previous convictions of the appellant also. We cannot be oblivious of the fact that while the law stood nebulous, charge sheets have been submitted, trials in progress or concluded, and appeals pending all of which will necessarily be impacted.

18. The criminal justice delivery system, cannot be allowed to veer exclusively to the benefit of the offender making it unidirectional exercise. A proper administration of the criminal justice



delivery system, therefore requires balancing the rights of the accused and the prosecution, so that the law laid down in *Mohan Lal (supra)* is not allowed to become a spring board for acquittal in prosecutions prior to the same, irrespective of all other considerations. We therefore hold that all pending criminal prosecutions, trials and appeals prior to the law laid down in *Mohan Lal (supra)* shall continue to be governed by the individual facts of the case.''

16. In yet another judgment in the case of ***Mukesh Singh Vs. The State (Narcotic Branch of Delhi)*** reported in **2019(1) MWN (Cr.) 261 (SC)**, the Honourable Supreme Court has held that the decision taken in ***Mohan Lal Vs. The State of Punjab***, the said case needs to be reconsidered and recommended for reconsidering by a Bench of three Judges. Therefore, the ground raised by the appellants in this regard is rejected.

17. In this case, P.W.5/the Inspector of Police has received a reliable information from P.Ws.1 and 2. P.Ws.1 and 2 have passed a message about the suspicious circumstances in which the accused were found in the bazaar on the date of occurrence and based on this information, P.W.5 along with P.Ws.1 to 3 went to Bodinayakkanur Town and also found these accused and arrested them and recorded their confession statement and also recovered counterfeit currency notes M.O.1 to 3 series. The volume of the counterfeit currency note recovered from the accused 1 and 2 would by itself explain that the accused were having the knowledge about the consequence of their act. Though P.W.2 was treated as hostile, he did not recover any material from A1 in the search. He has stated about the recovery from the Accused No.2 from his house. However, apart from the evidence of P.W.2, P.W.1 and 3 were also present at the place of occurrence. They have categorically stated about the arrest and recovery made by P.W.5 from the accused No.1 and 2. Therefore, it has to be inferred that the prosecution has proved the arrest and recovery through the evidence of P.Ws.1 and 3.

18. No doubt, the Accused No.3 is yet to be apprehended. It is the case of the prosecution that the accused No.3 is the main accused in this case and he only arranged the counterfeit currency notes and circulated the same through Accused No.1 and 2. In the absence of any materials that the Accused No.3 is in the habit of printing counterfeit currency notes and circulating the same, mere possession of the counterfeit currency notes, recovered from the Accused No.1 and 2 would not make out a case for the offence under Section 489(b) IPC and it cannot be accepted on the quantum of



counterfeit currency notes alone, which are recovered from the appellants/Accused No.1 and 2.

19.The number of the counterfeit currency notes found in the possession of the appellants/accused Nos.1 and 2 and the circumstances in which they were so found, may by themselves, constitute sufficient ground for drawing the inference that the intention was to use them as genuine or that they may be used as genuine and therefore, they are liable to be convicted for the offence under Section 489(c) IPC.

20.The investigation agency has miserably failed to secure the main accused Kabir(A3). It is the case of the prosecution that the Accused No.3, namely, Kabir, from Kerala met the Accused No.2 and handed over 24 bundles of 10 rupees counterfeit notes. Consequent to that, the appellants conspired to circulate the same in the market and at that time, they were apprehended. The prosecution has therefore proved the offence under Section 120(b) as well as the offence under Section 489(c) IPC. But, due to the failure of the investigation agency in securing the Accused No.3, namely, Kabir, the benefit of doubt for the offence under Section 498(b) IPC is extended to the appellants, as there is no material on record to show how they received or bought, these counterfeit currencies.

21.With regard to the sentence, the learned counsel for the appellants made a submission that the appellants are not involved in any previous cases and they they are only street vendors. They were found in possession of the counterfeit currencies, but the same was without their knowledge and the denominations of the currencies are also Rs.10/-. According to him, people nearly verify the genuineness of any currency on lower denomination and therefore, sought for indulgence of this Court.

22.Considering the totality of the circumstances, and the fact that the accused have not been involved in any other case, the conviction and sentence imposed upon the appellants by the Assistant Sessions and Chief Judicial Magistrate Court, Theni, in S.C.No.69 of 2012, dated 08.01.2014, are modified as follows:

(i)The conviction and sentence imposed on the appellants/Accused under Section 120(b) IPC is confirmed.

(ii)The conviction imposed on the appellants for the offence under Section 489(c) I.P.C., is confirmed, however, the sentence is modified five years rigorous imprisonment, instead of seven years rigorous imprisonment. The fine amount as well as

<https://hcservices.ecourts.gov.in/> do not remain unaltered.



(iii) The conviction and sentence imposed on the appellants for the offence under Section 489(b) I.P.C., is set aside and they are acquitted of this charge.

(iv) The above sentences imposed on appellants/accused 1 to 2 shall run concurrently.

The trial Court is directed to secure the appellants [Accused Nos.1 and 2] and confine them to prison to undergo the remaining period of sentence. Bail bonds, if any, executed shall stand terminated.

23. With the above modifications, these Criminal Appeals are partly allowed.

Sd/-

Assistant Registrar(AS)

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/ /2020

Sub Assistant Registrar(CS)

vsg

To

1. The Assistant Sessions and Chief Judicial Magistrate Court, Theni.
2. The District Munsif Cum Judicial Magistrate, Bodi.
3. The Superintendent, Central Prison, Madurai.
4. The Inspector of Police,
Bodi Town Circle Police Station,
Theni District.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



COPY TO

The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai. (2 copies)

Cr1.A(MD)Nos.67 and 101 of 2014
24.10.2019

SMV (CO)
TR(12.08.2020) 13P 8C