

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	30.04.2019
Date of Judgment	29.07.2019

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THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI****Cr1.A.(MD)No.289 of 2018**

Jabarullah

: Appellant/Sole Accused

Vs.

State rep. by
The Deputy Superintendent of Police,
CBCID (Counterfeit note wing)
Madurai.
(Crime No.3 of 2007)

: Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code against the judgment made in S.C.No.183 of 2016, dated 31.01.2018 on the file of the V Additional District and Sessions Judge, Madurai against the order passed by the Judicial Magistrate No.4, Madurai in PRC No.73 of 2010.

For Appellant : Mr.S.Pakalavan

For Respondent : Mr.A.Robinson,
Government Advocate (Cr1.side)**J U D G M E N T .**

This Criminal Appeal is directed against the judgment made in S.C No.183 of 2016, dated 21.01.2018 on the file of the V Additional District and Sessions Judge, Madurai.

2.The case of the prosecution is that on 26.04.2007 at about 3.00 pm, while the Inspector of Police, CBCID (Counterfeit Note Wing), Madurai was on patrol duty along with his team at Madurai B.B.Kulam Uzhavar Sandahi, the informant identified the accused and showed him with counterfeit notes to the police and on suspicious the de-facto complainant questioned the accused, at that time he produced Rs.100/- counterfeit notes eight in number to the police and subsequently, the accused was arrested and the counterfeit notes were seized.

3.In the trial court, 9 witnesses were examined and 8 Exhibits and 1 material object were marked. When the accused was questioned about the incriminating circumstances, he denied the same. On the side of the accused, no witness was examined and no document was marked. The trial court convicted the appellant/accused for the offence under Section 489-C IPC and sentenced him to undergo



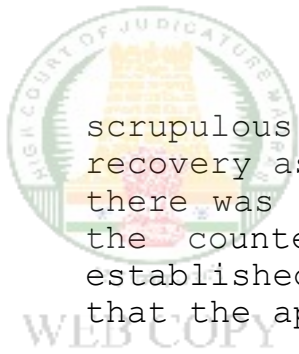
simple imprisonment for 4 years and to pay a fine of Rs.5,000/-, in default to undergo one month simple imprisonment. Aggrieved by the judgment passed by the trial court, the appellant/accused is before this court.

4.The learned counsel appearing for the appellant/accused submitted that the arrest, confession and recovery in this case have not been established to the hint since PW2 and PW3, who supposed to be supported the arrest, confession, recovery turned hostile and not supported the prosecution case and the trial court failed to consider the evidence of PW1, who categorically admitted that after the recovery of counterfeit currency notes from the accused, then only a confession has been recorded and this evidence would clearly demonstrate that section 27 of the Evidence Act has not been adhered in scrupulous manner and the confession leading to recovery as projected by the prosecution is colluded with suspicion and in this case, according to the prosecution, PW5 stood as a Magazar witness and he categorically admitted that he was working as a Sweeper in the police station and as per the instruction of the Inspector, he put his signature in the Magazar document without knowing the contents of it and in this case, PW9 categorically admitted that in the charge sheet, there is no whisper that the accused has circulated the counterfeit currency notes and the trial court failed to consider that in-spite of alleged currency notes recovered on 26.04.2007 by the police, but the same had been handed over to the jurisdiction Magistrate only on 03.05.2007 after lapse of seven days and this delay remains unexplained and created suspicious and the trial court failed to advert the ingredients, which are essential to establish the offence under Section 498-C of IPC. In view of the above circumstances, the judgment of the trial court has to be set aside and the criminal appeal has to be allowed.

5.On the other hand, the learned Government Advocate (Criminal side) appearing for the respondent/State submitted that trial court appreciated the evidence in a proper manner and believed the evidence of the eye witnesses and having regard to the nature of the offence, convicted the appellant and passed proper sentence, which do not require any interference by this court and the appellant/accused is not entitled for acquittal and prays that the criminal appeal may be dismissed.

6.Heard both sides and perused the materials available on record.

7.The contention raised on the appellant/accused is that the arrest, confession and recovery have not been established to the hint since PW2 and PW3, who supposed to be supported the evidence of arrest, confession and recovery turned hostile and did not support the case of the prosecution and the evidence of PW1 who categorically admitted that after the recovery of counterfeit currency notes from the accused, then the confession has been recorded and this sort of evidence would clearly demonstrate that section 27 of the Indian Evidence Act has not been adhered in



scrupulous manner and if that been so, the confession leading to recovery as projected by the prosecution colluded with suspicion and there was no evidence to the effect that the accused had circulated the counterfeit currency notes, hence the essential ingredient established the offence under Section 498 IPC was not made and prays that the appellant/accused is entitled to acquittal.

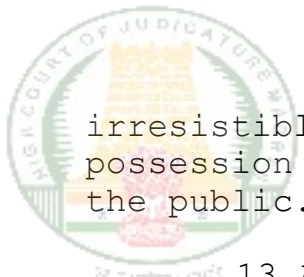
8. PW1 to PW4 and PW8 are the arrest and recovery witnesses. But PW2 and PW3 turned hostile and did not support the case of the prosecution.

9. PW1, PW4 and PW8 deposed that on 26.04.2007 PW8 received information from the informant that a person is standing near B.B.Kulam Uzhavar Santhi Road with counterfeit notes and then PW8 with his team went to the above place and the informant identified the accused person and left the place and PW8 questioned the accused and the accused admitted that he was in possession of counterfeit notes and produced Rs.100/- counterfeit notes eight in number in their presence and PW1 to PW4 put their signature in the recovery magazar.

10. In this case, the only question for consideration is that the accused was in possession of the counterfeit notes with him with an intention of using as genuine or that may be used as genuine.

11. PW7 is the Scientific Assistant of Forensic Laboratory, Chennai. PW7 deposed that eight security features were not found in the currently notes (items 1 to 8) and he gave Ex.P3 receipt. On perusal of Ex.P3 report, it reveals that items 1 to 8 were examined with the corresponding genuine 100-rupee note of RBI under Stereo Microscope, UV light source and different visible light sources and they were found to be different from the genuine currency notes. PW7 also opined that items 1 to 8 are counterfeit 100 rupees Indian Currency Notes. Hence, from the evidence of PW7 and Ex.P3, it reveals that the currency notes recovered from the accused are counterfeit 100 rupees Indian currency notes.

12. The case of the prosecution is that the accused found in possession of counterfeit notes of Rs.100 eight in numbers. PW1, PW4 and PW8 categorically deposed that on the information from the informant, they went to the place of occurrence and PW8 searched the accused and when questioned him, the accused admitted that he was in possession of counterfeit currency notes and produced it in the presence of PW1 to PW4 and PW8 and the above counterfeit notes were recovered by way of attachi. The accused was found in possession of counterfeit notes and the circumstances in which they were so found, may by themselves, constitute a sufficient ground for drawing the inference that the intention was to use them as genuine or that they may be used as genuine. No explanation was given on the side of the accused how he was in possession of the counterfeit currency notes. hence, it reveals that the accused was in possession of counterfeit notes intended to use it as genuine and the circumstances would



irresistibly lead to the conclusion that the accused was found in possession of counterfeit notes with intention to circulate it in the public.

13. Already it is stated on the side of the respondent that there are several cases as against the accused for the same offence, which are pending. The above fact was not denied on the side of the accused. For the reasons stated above, this court is of the considered view that the trial court after properly considering the entire materials available on record, has passed the judgement, which does not require any interference by this court. However, considering the age and family circumstances of the appellant, the punishment imposed on the appellant requires modification.

14. In the result, this Criminal Appeal is **partly allowed**. The punishment imposed on the appellant for the offence under Section 489-C is reduced to 3 years RI. In other aspects, the findings of the trial court is confirmed. The period of sentence, if any already undergone by the appellant shall be given set off under Section 428 of Cr.P.C. The appellant, after adjusting the period of imprisonment already undergone, shall undergo imprisonment for the remaining period.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar (CS)

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To,

1. The V Additional District and Sessions Judge,
Madurai.
2. The Judicial Magistrate No.4, Madurai.
3. The Chief Judicial Magistrate, Madurai.
4. The Superintendent. Central Prison, Madurai.
5. The Deputy Superintendent of Police,
CBCID (Counterfeit note wing)
Madurai.
6. The Superintendent of Police, Madurai District.
7. The Additional Public Prosecutor,
Madurai Bench of Madras High Court
Madurai.



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

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