IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 16TH DAY OF DECEMBER 2020 / 25TH AGRAHAYANA, 1942

CRL.A.No.1075 OF 2005

AGAINST THE ORDER/JUDGMENT IN SC 361/2004 DATED 27-05-2005 OF SPECIAL C IDAMALAYAR INVN & 5 ADDITIONAL DISTRICT COURT .EKM

APPELLANT/S:

1 SADANANDAN @ UNNAN,
S/O.PARAMESWARAN,
KALATHIL VEEDU, KADAKKARAPPALLI VILLAGE,CHERTHALA.

2 ALOSIOUS @ RAJA SO. VARGHESE
ARAKKAL VEEDU, KALAVOOR VILLAGE.

BY ADV. SRI.K.M.VARGHESE

RESPONDENT/S:

STATE OF KERALA
REP. BY DEPUTY SUPERINTENDENT OF POLICE,, C.B.C.I.D. (CFS), KOZHIKODE, REPRESENTED BY, PUBLIC PROSECUTOR, HIGH COURT OF KEALA.

R1 BY PUBLIC PROSECUTOR

SRI.K.B.UDAYAKUMAR, SR.PP

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 09-12-2020, ALONG WITH CRL.A.935/2005, CRL.A.995/2005, THE COURT ON 16-12-2020 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 16TH DAY OF DECEMBER 2020 / 25TH AGRAHAYANA, 1942

CRL.A.No.935 OF 2005

AGAINST THE ORDER/JUDGMENT IN SC 361/2004 DATED 27-05-2005 OF SPECIAL C IDAMALAYAR INVN & 5 ADDITIONAL DISTRICT COURT .EKM

APPELLANT/S:

MATHEW @ KUNJAPPACHAN
S/O.MATHAI, EYYOPARAMBIL VEEDU,, VALIAKANDOM DESOM, KATTAPANA.

BY ADVS.
SRI.T.D.ROBIN
SRI.R.ANUP
SRI.V.DIPU
SRI.P.LEAN JOSE
SRI.K.R.SAJITH

RESPONDENT/S:

DEPUTY SUPERINTENDENT OF POLICE
C.B.I.C.D(C.F.S.) KOZHIKODE,, REPRESENTED BY THE PUBLIC, PROSECUTOR, HIGH COURT OF KERALA.

R1 BY PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 09-12-2020, ALONG WITH CRL.A.995/2005, CRL.A.1075/2005, THE COURT ON 16-12-2020 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 16TH DAY OF DECEMBER 2020 / 25TH AGRAHAYANA, 1942

CRL.A.No.995 OF 2005

AGAINST THE ORDER/JUDGMENT IN SC 361/2004 DATED 27-05-2005 OF SPECIAL C IDAMALAYAR INVN & 5 ADDITIONAL DISTRICT COURT .EKM

APPELLANT/S:

JOY THOMAS
S/O.THOMAS, MANAPALLIKUNNEL VEEDU,, KOROTHU DESOM,
EARUMALY VILLAGE.

BY ADVS.
SRI.S.RAJEEV
SRI.K.V.VINODKUMAR

RESPONDENT/S:

STATE OF KERALA
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,,
ERNAKULAM.

R1 BY PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 09-12-2020, ALONG WITH CRL.A.935/2005, CRL.A.1075/2005, THE COURT ON 16-12-2020 DELIVERED THE FOLLOWING:

C O M M O N J U D G M E N T

[CRL.A.1075/2005, CRL.A.935/2005, CRL.A.995/2005]

Dated this the 16th day of December 2020

These three appeals are filed by the accused challenging the same judgment. Therefore, I am disposing these three appeals by a common judgment. Crl.A No. 995/2005 is filed by the 1st accused in S.C. No. 361/2004 on the file of the Vth Additional Sessions Judge, Ernakulam. The Crl.A. No. 935/2005 is filed by the 2nd accused in above case. Similarly, Crl. Appeal. No. 1075/2005 is filed by the 3rd and 4th accused in the same case.

2. When these Criminal Appeals came up for consideration, I directed the learned Public Prosecutor to find out the whereabouts of the appellants and to file a statement before this Court about the same. The learned Public

Prosecutor after getting instructions submitted that the 2nd accused, who is the appellant in Crl.A. No. 935/2005 is no more. His death certificate was also produced. The Death Certificate of the 2nd accused produced will be part of the record in Crl.A. No. 935/2005.

3. This is a prosecution initiated by the Deputy Superintendent of Police, CBCID (CFS), Kozhikode against four accused, alleging offences punishable under section 489B, 489D r/w Section 120B of the IPC.

4. The prosecution case in brief is that on 06.11.1992, PW2, the Sub Inspector attached to the Special Squad of City Police Commissioner, Kochi, received an information that four persons are there in Room No. 6 of Priya Lodge, Ammankovil Road, Ernakulam and that they were in the room in pursuance of a criminal conspiracy to sell, buy or otherwise traffic in counterfeit currency notes. Based on that information, PW2 proceeded to the spot along with his party. According to PW2, he proceeded to the place after preparing

a search memo. According to PW2, the said room was searched in the presence of witnesses. The four accused persons in this case were in the room mentioned above. On search, PW2 and party found an airbag containing certain materials, which was concealed beneath the cot. There was also another bundle wrapped in a newspaper, which also contain certain materials which were used or intended for making counterfeit currency notes. When the body of these persons were searched, PW2 found that they were in possession of counterfeit U.S Dollars and UAE Dirhams. The accused were arrested and the properties were seized. Thereafter, the investigation was conducted by the Crime Branch (Counterfeit Squad) and after completing the investigation, chargesheet was filed by the officer concerned.

5. To substantiate the case, prosecution examined PW.1 to PW.11. Exhibits P.1 to P.23 are also marked. MO.1 to MO.42 are the material objects. Three exhibits are marked on the side of the defence as D.1 to D.3. Exhibits C.1 and

C.2 are the court exhibits.

6. After going through the evidence and the documents, the Trial Court found that the accused are guilty under Section 489B r/w 120B of the IPC, 489D r/w 120B IPC and also under Section 120B of the IPC. The appellants are sentenced to undergo Rigorous Imprisonment for three years for the offence under Section 489B and 489D r/w 120B IPC. They are also sentenced to undergo Rigorous Imprisonment for three years for the offence under Section 120B of the IPC. Besides these sentence, all the accused are sentenced to pay a fine of Rs. 20,000/- each for the offence under Section 489D r/w Section 120B of the IPC. In default of payment of fine, the accused are directed to undergo Rigorous Imprisonment of one year each. The substantive sentence of imprisonment were ordered to run concurrently. Aggrieved by the conviction of sentence, these three Criminal Appeals were filed by accused Nos. 1 to 4.

7. Heard the learned counsel for the appellants and the

learned Public Prosecutor.

8. The learned counsel for the appellants in Crl.A. 1075/2005 and in Crl.A. 995/2005 raised common grounds. Therefore, I am narrating their contentions together. According to the learned counsel, the entire search and seizure in this case is unreliable. The learned counsel submitted that the search, seizure and arrest in this case is not proved by the prosecution beyond reasonable doubts. The learned counsel submitted that all the independent witnesses in this case turned hostile to the prosecution. According to the learned counsel, there is only the evidence of PW1 to PW3. PW1 is the Manager of the Lodge, from where the alleged notes were seized by the Police. PW2 is the Detecting Officer and PW3 is the Constable who accompanied PW2. According to the learned counsel, the evidence of PW1 on one hand and evidence of PW2 and PW3 on the other hand are mutually contradictory. The learned counsel submitted that regarding the seizure of these

contraband articles itself, there is contradiction in the evidence of these witnesses. According to PW2 and PW3, the materials were seized based on the search list from the room in the Lodge. But, PW1 categorically stated that these materials were taken to the Counter of the Lodge and from there, these materials were seized. According to the learned counsel, these material contradiction in the evidence of PW1 on the one side and PW2 and PW3 on the other side will go to the root of the prosecution case. According to the learned counsel, PW1 has not identified the accused. Regarding the identity of the accused, there is only the evidence of PW2 and PW3. The learned counsel submitted that in effect there is only the evidence of official witnesses in this case to convict the accused. The learned counsel conceded that there is no rule that the evidence of official witnesses cannot be relied. But the contention of the learned counsel is that, in the facts and circumstances of the case, independent corroboration is necessary, especially because, there is a

clear contradiction in the evidence between the PW1 on the one side and PW2 and PW3 on the other side. The learned counsel also submitted that PW1 even deposed before the Court that three persons went out from the place, at the time of the alleged incident. The learned counsel also submitted that there is delay in producing the seized materials before the Court. According to the learned Counsel, there is one month delay in producing the materials before the Court. The learned counsel submitted that, that is fatal because, this is a case in which serious offences are alleged against the appellants. In such situation, it is the duty of the prosecution to show that the seized materials reached in the hands of the experts. The prosecution has to prove all the links starting from seizure of these contraband materials till it reaches the hands of the experts. According to the learned counsel the prosecution miserably failed to prove the same and for that simple reason, the accused is entitled the benefit of doubt. The learned counsel also

submitted that MO.6 and MO.7 are the alleged forged block used to print the forged dollars of United States of America. The prosecution has not proved that MO.6 and MO.7 are used for printing the American Dollars which is alleged to be seized from the possession of the accused. Therefore, according to the learned counsel, the prosecution is miserably failed to prove that the accused committed the offence under Section 489B of the IPC. The learned counsel also submitted that, to attract the offence under Section 489B of the IPC, the prosecution has to prove that the accused sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit. According to the learned counsel, even if the entire prosecution case is accepted, the ingredients of Section 489B of the IPC is not *prima facie* made out in this case. The learned counsel submitted that the conviction and sentence

imposed by the trial Court under Section 489B of the IPC is *prima facie* not maintainable. The learned counsel also submitted that there is absolutely no evidence to prove the offence under Section 120B of the IPC. Simply because, four persons were seen together in a hotel room, there is no presumption that they were conspiring to commit the offence. The learned counsel submitted that, even for that, there is no evidence adduced by the prosecution. Therefore, the submission of the learned counsel is that the offence under Section 120B of the IPC is also not made out.

9. It is also contented by the learned counsel that, the offence under Section 489 D IPC is also not prima facie made out in this case, because there is absolutely no evidence to show that, the accused was making or possessing instruments or materials for forging or counterfeiting currency notes or bank notes. The learned counsel submitted that, in such circumstances the trial court erred in convicting the appellants under Sections 489 B and 489 D read with

120 B IPC. The learned counsel also submitted that, from the evidence adduced by the prosecution, it is clear that, one Mohanan is really involved in this case. No investigation is conducted by the Investigating Officer about the Mohanan. The learned counsel submitted that, the accused is entitled the benefit of doubt.

10. The learned Public Prosecutor submitted that, there is oral and documentary evidence to prove the offence under Sections 489 B and 489 D in this case. The learned Public Prosecutor submitted that, there is nothing wrong in relying the evidence of official witnesses in this case. According to the learned Public Prosecutor, the evidence of PW2 and PW3 are reliable and there is nothing to disbelieve the evidence of these witnesses. The learned Public Prosecutor submitted that, in the light of the oral evidence of PW2 and PW3 and in the light of the Exhibits and material objects produced in this case, the prosecution proved the offence under Sections 489 B and 489 D in this case. Therefore, the learned Public

Prosecutor submitted that, there is nothing to interfere with the conviction and sentence imposed on the appellants in this case.

11. The point for consideration in this case are the following;

1. Whether the accused committed the offence under Section 489 B read with 120 B IPC.

2. Whether the accused committed the offence under Section 489 D read with 120 B IPC.

3. Whether there is any evidence to prove that the accused committed the offence under Section 120 B IPC.

12. Altogether 11 witnesses were examined in this case. PW1 is the Manager of Priya lodge. PW2 is the Officer, who detected the crime. He is the Sub Inspector of Police. PW3 is the head constable, who accompanied PW2. PW4,

PW6 to PW9 were examined to prove the previous conduct of the accused. PW5 is the head constable, who registered the FIR. PW10 is the Investigating Officer and PW11 is the Officer, who submitted the final report.

13. PW2 is the Detecting Officer in this case. He deposed before the court that on 06.11.1992, he got a reliable information that some persons had taken a room in Priya Lodge, Ammankovil Road, Ernakulam for the purpose of transacting counterfeit US Dollars and other counterfeit notes. In pursuance of that information he proceeded to the spot along with PW3 and other police party. Before proceeding to the place Ext.P4 search memo was prepared and signed by him was entrusted to the police constable to sent to the learned Magistrate. According to PW1, he met PW1 the Manager of Priya Lodge and thereafter went to room No. 6 of Priya lodge on that day at about 4.00 p.m. When PW2 knocked the room at the door, 1st accused opened the door. At that time the 1st accused and 3 other accused were

there inside the room. The said room was searched by PW2 and the police party. Ext.P1 is the search list. As per Ext.P1 search list, MO1 to MO23 were seized from the room. Thereafter, the body of the accused was searched. MO25 and MO26 were seized from the possession of the 1st accused. MO27 and MO28 were seized from the possession of the 2nd accused. MO29 to MO32 were seized from the possession of the 3rd accused. MO33 to MO38 were seized from the possession of the 4th accused. These seized articles were narrated in detail in Ext.P1 search list. Thereafter, the accused were arrested and along with the seized articles, they reached the police station. Ext.P7 FIR was prepared by PW5. Thereafter, on further investigation the 2nd accused was questioned and based on his confession statement the house of PW6 was searched and as per Ext.P13 seizure Mahazar, MO39 to MO42 were seized. These part of the investigation was conducted by the PW10. Thereafter, the seized articles were sent for expert opinion. Ext.P15 is the report of

examination as far as the US Dollars, which is marked as MO6, MO7, MO25 to MO29 and MO35. In the report, it is stated that, the same are counterfeit US Dollars. Ext.P20 is another expert opinion report which relates to MO1 to MO5, which are the forged blocks to print 50 rupee Indian currency and 100 rupee Indian currency. The expert stated that, these material objects can be used for forging counterfeit notes. Based on this evidence the final report is filed before the court against the 4th accused.

14. PW3 is the head constable, who accompanied PW2 corroborate the evidence of PW2 as far as the search, seizure and arrest is concerned. It is true that, there is no independent corroboration to the evidence of PW2 and PW3. Now it is settled by several decision of this Court and Apex Court that, the search and seizure can not be rejected, simply because there is no independent corroboration to the official witnesses, if the evidence of official witnesses is otherwise reliable. I perused the evidence of PW2 and PW3 in

detail. It is true that, there are some contradictions and omissions in the evidence of PW2 and PW3. It is an admitted fact that, the alleged seizure happened in 1992. These witnesses were giving evidence before the court after about 12 years. These contradictions and omissions are natural. These contradictions and omissions will only strengthen the reliability of their evidence. Therefore, according to me, there is nothing to disbelieve the evidence of PW2 and PW3 regarding the search, seizure and arrest of the accused.

15. It is true that, the learned counsel for the appellant raised a serious contention about the contradictions in the evidence of PW2 and PW3 on one side and evidence of PW1 on other side. I perused the evidence of PW1 also in detail. It is true that, there is some contradictions regarding the place from where these material objects were seized as per Ext.P1 search list. The trial court rejected the contentions of the accused on this contradictions observing that, PW1 is giving evidence after about 12 years from the date of search

and these contradictions is not material. I see no reason to disagree with the finding of the learned Sessions Judge. It is a fact that, the alleged search, seizure and arrest was in 1992. PW1 is giving evidence after 12 years from the date of the alleged seizure. Simply because PW1 deposed before the court that, the materials seized from the room is taken to the counter of the hotel and the seizure was from the counter, which is contradictory to the evidence of other witnesses, I cannot ignore the entire evidence of PW1 to PW3 on that ground alone. Moreover if PW1 wants to support the prosecution it is very easy for PW1 to identify the accused 1 to 4. But PW1 was not able to identify the accused Nos. 1 to 4. That itself shows that his evidence is reliable. As I said earlier, simply because there is a contradictions about the place where the search list is prepared and the items were seized, I cannot reject the evidence of PW1 to PW3 in toto. It is a fact that, the search, seizure and arrest were happened at Priya lodge, Ammankovil Road. The counter which is

mentioned by PW1 is in the same lodge itself. When PW1 was giving evidence after about 12 years, these type of contradictions, as I said earlier is natural and hence it is to be ignored by a court of law. Therefore, according to me, evidence of PW1 to PW3 are reliable and trustworthy as far as search, seizure and arrest of the accused is concerned.

16. Then the question is what are the materials seized by PW2 based on Ext.P1 search list. As per Ext.P1, MO1 to MO24 were seized. MO1 is the forged blocks to print front design of forged 50 rupee Indian currency. MO2 is the forged blocks to print back side design of forged 50 rupee Indian currency. Nine numbers of MO1 were seized and 7 numbers of MO2 were seized as per Ext. P1 search list. MO3 is the forged blocks to print back side of forged 100 rupee Indian currency. MO4 is the forged blocks to print the front side design of forged 100 rupee Indian currency notes. MO5 is the copper sheet pieces. According to the counsel for the appellant, these material objects were not seized from the

possession of the accused and the prosecution fail to prove the conscious possession of these articles by the accused. I cannot agree with the learned counsel for the appellant on this ground also. Ext.P2 is the lodge register kept by PW1. The learned Sessions Judge perused the entire Ext.P2. The learned Sessions Judge found that, there is entries in the register before and after the alleged date of search. Ext.P2(a) is page Nos. 12 and 13 in entry No. 55 in Ext.P2 lodge register. That will show that accused No. 2 took room No. 6 of Priya Lodge on 06.11.1992. Ext.P2(b) is the entry in page No. 13 in the lodge register. Ext.P2(b) will show that, the 2nd accused took this room along with 3 others. It is proved through the evidence of PW2 and PW3, that the accused No. 1 to 4 were available in room No. 6 of Priya Lodge at the time of search and seizure. It is true that, there is a contention from the side of the appellant that, Ext.P2 cannot be accepted, because it is produced subsequently. The learned counsel submitted that, it is seized subsequently

by PW10. According to the learned counsel, PW1 is a retired police constable and he is actually supporting the prosecution in this case. I cannot agree with this contentions of the appellant also. As I said earlier, there are entries in Ext. P2 lodge register to prove the occupation of the rooms by others before and after the alleged date of search. Moreover in Ext.P2(a) will show that, the 2nd accused took this room on 06.11.1992. Ext.P2(b) entry will show that, 3 others were also there in the room along with the 2nd accused. PW2 and PW3 adduced evidence to the effect that accused No. 1 to 4 were present in the room. MO1 to MO5 were seized from the beneath of the cot in the room. According to me, the prosecution proved that, the accused took this room on that particular day and the prosecution also proved that, they were occupying this room on that day. The prosecution also proved that, they were present at the time of the alleged search. In such circumstances according to me, the burden shift to the accused to prove that how these material objects

came in that particular room in which they were occupying. There is absolutely no explanation from the accused regarding these material objects which is seized from a room which is occupied by the accused on that day. Therefore, according to me, the contentions of the learned counsel for the appellant that, they were not in conscious possession of these material objects cannot be accepted and hence rejected.

17. As I observed earlier, MO1 to MO4 are forged blocks to print forged fifty rupees Indian currency notes and forged hundred rupees Indian currency notes. These blocks were seized from the possession of the accused in this case. There is absolutely no explanation for possessing these forged blocks from room No.6 of Priya Lodge, which was occupied by the accused in this case. In such circumstances, according to me, there is a presumption that the accused in this case were in possession of these blocks for printing forged currency notes.

18. In addition to that, from the possession of first accused, MO25 and MO26 were seized. MO25 is three numbers of forged American dollars. MO26 is also one forged American dollar with another number. MO25 and MO26 were seized from the pocket of the first accused. MO25 and MO26 were sent for expert opinion. Ext.P15 is the expert opinion as far as the MO 25 and 26 is concerned. In Ext.P15 report, it is stated that the dollars which were forwarded to the experts are counterfeit dollars. Therefore, as far as the first accused is concerned, counterfeit American dollars were seized from the possession of the first accused. It is proved through the evidence of PW2 and PW3, coupled with the evidence of PW1 and also Ext.P1 search list. The seized American dollars are proved as counterfeit dollars as per Ext.P15 expert opinion.

19. As far as the second accused is concerned, I am not considering the same in detail because, he is no more and the sentence imposed on him is abated. MO 29 series is the

forged dollars bearing number B 36901265 A. These two forged dollars were seized as per the Ext.P1 search list from the third accused. Ext.P15 report says that MO29 is a forged American dollar. Similarly, MO35 is seized from the fourth accused. Ex.P15 report says that the same is also a forged American dollar.

20. Similarly, MO1 to MO4 were forwarded to the expert and Ext.P20 is the expert opinion report. In Ext.P20 it is stated that the blocks are an imitated part design of front side and back side of Rs.50/- denomination genuine note, whereas blocks marked as C and D bear an imitated part design of Rs.100/- denomination genuine note. It is mentioned in Ext.P20 report that these blocks can be used for counterfeiting purpose. Therefore, it is clear that the MO1 to MO4 are seized from room No.6 of Priya Lodge, which was in occupation of accused nos.1 to 4 on 06.11.1992. It is proved by the prosecution as per Ext.P20 report that these blocks can be used for counterfeiting

purpose. MO 25 to 29 and MO 35 are proved as forged American dollars as per Ext.P15 report. There is absolutely no explanation from the accused for the possession of MO 1 to MO 4 and the forged American dollars.

21. The counsel for the appellants challenge Ext.P15 and P20 report saying that the expert has no authority to examine American dollars and therefore, the same is not admissible. According to me, that point also cannot be accepted. Section 293 Cr.PC says that any document purporting to be a report under the hand of the Government scientific expert to whom the section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceedings under this Code, may be used as evidence in any inquiry, trial or other proceedings under this Code. Section 293 (2) Cr.PC says that the the court may, if it thinks fit, summon and examine any such expert as to the subject- matter of his report.

22. Exts.P15 and P20 reports were marked before the trial court. There is absolutely no objection raised by the accused alleging that the experts are not competent to give such a report. Hence, according to me, the accused cannot take such a contention at the appellate stage. The counsel submitted that this is a legal issue and therefore, such contentions can be raised even at appellate stage. I cannot agree with the same also. When a document is marked before the lower court without any objection which is admissible under Section 293 Cr.PC, the accused cannot raise the admissibility of that document at the appellate stage. I can understand, if a document which is not covered under Section 293 Cr.PC is marked by the lower court and a legal contention is raised at the appellate stage. In such situation , the same can be considered by the Appellate Court. According to me, admissibility of Ext.P15 and P20 cannot be raised at this belated stage by the accused. In such circumstances, according to me, there is absolutely no

explanation for the possession of the material objects which were narrated by me earlier. Material objects seized include counterfeit American dollars. It is true that some nuts and bolts were seized from the house of PW6 based on a confession statement of second accused as per the Ext.P13 seizure mahazar. Serious contentions were raised by the counsel for the appellant that the same will not prove that the accused were in possession of machinery for printing counterfeit notes. The counsel also submitted that no reminiscence was also seized. According to me, even if the items seized as per Ext.13 is excluded, there is absolutely no explanation for the accused for the possession of MO 1 to MO 4 and the counterfeit American dollars.

23. The offence alleged against the appellants are mainly under Section 489 B and 489 D.

24. First, I will consider Section 489B IPC. Section 489B IPC is extracted hereunder:

> **"489.B. Using as genuine, forged or counterfeit currency-notes or bank-notes-**Whoever sells to, or buys or receives from, any other person, or

> otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.".

25. To attract an offence under section 489B IPC, the prosecution has to establish that the accused sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency note or bank note, knowing or having reason to believe the same to be forged or counterfeit. A reading of the above Section will show that the main part of the section is "sell to, or buys or receives from any other person or traffics in or uses as genuine". Even if the entire allegation in the case is accepted, there is no evidence adduced by the prosecution that the accused were doing the activity of sell to or buy or receives from any other persons or otherwise traffics in or uses as genuine any forged or counterfeit currency notes or bank notes. This Court considered the ingredients of Section 489B IPC in detail in **Muhammed Koya & others vs. State**

of Kerala (2020 (3) KLT 441). The relevant paragraphs are extracted hereunder:

> "11. The question to be decided is whether Section 489B is attracted in this case. For easy reference, it will be beneficial to extract Section 489B IPC. Section 489(B). Using as genuine, forged or counterfeit currency-notes or bank-notes: "Whoever sells to, or buys or receives from any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine." To attract the offence under Section 489(B), mere possession of counterfeit note is not enough. The Section says that, if the accused sells it, or buys or receives from any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note, or bank-note, knowing or having reason to believe the same to be forged or counterfeit alone is punishable as per the said Section. Therefore, there must be evidence to show that the accused sells to or buys, or receives from any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit. In this case the prosecution has no case that, the accused sells counterfeit notes or buys, or receives from any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, except the case that, they were in possession of the counterfeit note. When there is no evidence to show that, the accused sells it or buys, or receives from any other person or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, no offence under Section 489B IPC is made out. But in such cases, offence under Section

489C may attract. Section 489C says that whoever has in his possession any forged or counterfeit currency-note, or bank-note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, is punishable. The difference between 489B and 489C is that, as per Section 489B whoever sells to, or buys or receives from any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, is punishable. On the other hand Section 489C says, whoever has in his possession any forged or counterfeit currency-note, or banknote, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, is punishable. In this case, except the fact that the original accused No.2 (Muhammed Koya) and the original accused No.5 (Prasad) were in possession of counterfeit notes knowing or having reason to believe the same to be counterfeit and knowing to use the same as genuine, there is no case to the prosecution that these accused sells it or buy, or receives from any other person or otherwise traffics in or uses as genuine any forged or counterfeit currency-note or bank-note knowing or having reason to believe the same to be forged or counterfeit. Therefore, according to me, in this case original accused No.2 (Muhammed Koya) and original accused No.5 (Prasad) are liable for the offence punishable under Section 489C IPC and not under Section 489B IPC. As far as original accused No.2 is concerned, MO1 counterfeit note is seized from his suitcase. Morevoer, based on his statement, the search was conducted at Room No.210 of K.N.S. Lodge, Attingal, from where huge number of counterfeit notes are seized. As far as original 5 th accused is concerned, he is producing 10 bundles of counterfeit notes to the detecting officer. To attract Section 489C, in addition to the possession of counterfeit notes, there should be evidence to show that, possession with knowledge that it is counterfeit note or having reason to believe that the same to be counterfeit note or forged and intending to use the same as genuine or that it may

> be used as genuine, is necessary. "Reason to believe" is defined in Section 26 of the Indian Penal Code which reads as follows: "A person is said to have "reason to believe" a thing, if he has sufficient cause to believe that thing but not otherwise". The prosuection should prove also the "reason to believe" the things mentioned in Section 489C IPC to convict a person. But this proof need not be necessarily by direct evidence. The various circumstances leading to the seizure of forged notes and the manner in which the accused came into possession of these notes are important circumstances. In this case original accused No.2 gave statement which leads to the recovery of huge quantity of counterfeit notes from Attingal Lodge. From his suitcase MO1 is seized. Moreover, original accused No.5 handed over 10 bundles of counterfeit notes to PW5 and there is no explanation to him for possessing the same. Hence, these are strong circumstance against A2 and A6 to show that they are in possession of the counterfeit notes with knowledge that the same is counterfeit notes intending to use the same as genuine or it may be used as genuine. Hence, an offence under Section 489C is made out against A2 and A6"

26. According to me, even if, the entire evidence in this case is accepted, the ingredients of offence under Section 489B IPC is not made out in this case. Therefore, according to me, the accused are entitled to the benefit of doubt, as far as the conviction and sentence under Section 489B IPC is concerned.

27. Then the next question is whether the accused committed the offence under Section 489D IPC. Section

489D IPC is extracted hereunder:

> "**489.D. Making or possessing instruments or materials for forging or counterfeiting currency -notes or bank notes.-**"Whoever makes, or performs, any part of the process of making, or buys or sells or disposes of, or has in his possession, any machinery, instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for forging or counterfeiting any currency-note or bank-note, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

28. To attract Section 489D the prosecution has to prove that the accused makes, or performs, any part of the process of making, or buys or sells or disposes of, or has in his possession, any machinery, instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for forging or counterfeiting any currency-note or bank-note.

29. What is the evidence available in this case to attract Section 489D IPC is the question to be decided. As I said earlier, MO1 to MO4 are forged blocks to print counterfeit currency notes. These material objects were seized from the conscious possession of the accused. There is absolutely no

explanation from the accused for the possession of MO1 to MO4. A reading of Ext.P20 report of the expert will show that these blocks can be used for forging counterfeit notes. If that is the case, according to me, this is a case in which the offence under Section 489D IPC is clearly made out. As I said earlier, there is absolutely no explanation for the possession of MO1 to MO4. As I said earlier, these are forged blocks used to print front design and back design of counterfeit currency notes. If a person is found in possession of the same without any explanation, according to me, this Court can safely conclude that he is in possession of the same for the purpose of making the counterfeit currency notes. In such circumstances, according to me, the appellants in this case are liable under Section 489D IPC.

30. Then the question is whether there is any evidence to show that there is conspiracy among the accused. The trial court convicted the accused with the aid of Section 120B IPC. Admittedly, all the four accused are natives of different

places. First accused is from Erumeli Village, second accused is from Kattappana, third accused is from Cherthala and fourth accused is from Kalampoor village. These are different places in state of Kerala. All these four accused were seen together in room No.6 of Priya Lodge, Ammankovil Road, Kochi. From that room MO1 to MO4 were seized. Counterfeit American dollars were also seized from the possession of accused Nos.1 to 4. Usually, there will not be any direct evidence as far as conspiracy is concerned. From the proved circumstances in this case, according to me, the conspiracy is gatherable and it is proved by the prosecution beyond reasonable doubts. Therefore, according to me, the offence under Section 120B is also proved by the prosecution beyond reasonable doubts.

31. Then the next question to be decided is what is the sentence to be imposed. As far as the offence under Section 489D IPC is concerned the trial court imposed rigorous imprisonment for three years and to pay a fine of

Rs.20,000/-. The accused are also sentenced for rigorous imprisonment for three years under Section 120B IPC. The alleged seizure in this case was in 1992. Now about 28 years elapsed after the alleged seizure. According to the counsel for the appellant all the accused are above 60 years of age. The counsel for the appellants submitted that, in such circumstances, they may not be sent to jail at this distance of time. The counsel for the appellant also submitted that there was pre-trial detention for more than one month and there is no minimum sentence prescribed under Section 489D IPC. The submission of the learned counsel is that the sentence may be reduced to the period already undergone with a fine. I cannot agree with the submission of the appellant. This is a case in which the accused were found guilty under Section 489D r/w 120B IPC. They were found guilty for making or possessing instruments or materials used for forging counterfeit currency notes.They were found in possession of forged American dollars. MO 1

to MO4 are blocks used for printing counterfeit notes. According to me, there cannot be any leniency to these type of accused, because these are offences against the society. But considering the entire facts and circumstances of the case and also considering the fact that the accused are all above 60 years of age and also considering the facts that no other criminal antecedents are reported before or after the incident, I think the substantive, sentence can be reduced to two years instead of three years. Therefore, these Criminal Appeals are disposed of in the following manner:

i) Crl.A. No.935 of 2005 is closed as abated, as far as the sentence of imprisonment is concerned.

ii) Crl.A. Nos.995 of 2005 and 1075 of 2005 are allowed in part.

iii) The conviction and sentence imposed on the appellants in Crl.A Nos.995 of 2005 and 1075 of 2005 under Section 489B r/w 120B IPC is set aside. But the conviction on them under Section 489D r/w Section 120B IPC and the

conviction imposed under Section 120 B are confirmed. They are sentenced to undergo rigorous imprisonment for two years each and to pay a fine of Rs.20,000 under Section 489D r/w Section 120B IPC. In default of payment of fine, the accused are sentenced to undergo simple imprisonment of one year. The appellants are also sentenced to undergo rigorous imprisonment for two years under Section 120B IPC. The sentence will run concurrently.

iv) Set off allowed.

Sd/-

P.V.KUNHIKRISHNAN

JUDGE

avs/LU/JS