

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.7376 of 2020

in Crl.A.No.476 of 2020

Abdul Khader

... Petitioner

Versus

The State of Tamil Nadu represented by,
The Inspector of Police,
Counterfeiting Currency Wing,
Crime Branch Central Investigation Department,
Chennai-2.
(Cr.No.214 of 2002)

.... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) of the Code of Criminal Procedure, to suspend the sentence imposed on the petitioner by a judgment dated 15.10.2020 in S.C.No.306 of 2008 passed by the II Additional Sessions Judge, Chennai, pending disposal of the above Crl.A.No.476 of 2020.

For Petitioner : Mr.T.Shanmuga Boopathi

For Respondent : Mr.C.Raghavan,
Government Advocate [Crl. Side]

ORDER

This Criminal Miscellaneous Petition to suspend the sentence imposed in the judgment dated 15.10.2020, in S.C.No.306 of 2008, by the learned II Additional Sessions Judge, Chennai.

2.The petitioner/A1 was convicted for offence under Sections 489A, 489C and 489D IPC and sentenced as follows:-

- To undergo three years Rigorous Imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo Simple Imprisonment for six months, for offence under Section 489A IPC;
- To undergo three years Rigorous Imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo Simple Imprisonment for six months, for offence under Section 489C IPC. All the sentences were ordered to run concurrently.

3.The facts of the case is that the Sub Inspector of Police, C-3 Sevenwells Police Station, Chennai on 06.04.2002 at about 02.30 p.m., received secret information that the petitioner/A1 was having

counterfeit currency notes of denomination of Rs.500/- at Door No.53, St.Xaviers Street. This information was forwarded to the Inspector of Police and the Inspector of Police reached the said place and interrogated the petitioner/A1. A1 gave confession statement and produced two bundles of denomination of rupees 500 counterfeit currency notes and one bundle of rupees 100 denomination counterfeit currency notes and the same were recovered by preparing Recovery Mahazar in presence of witnesses. On the basis of the confession of the petitioner/A1, the Police personnel proceeded to Door No.94, Broadway, Chennai at about 04.10 p.m., where the petitioner/A1 identified other two accused A2 and A3. A3 produced 16 bundles of counterfeit currency notes of denomination of rupees 500 and PCS Colour Monitor Model No.1556D, TVS Printer Model No.20011358809, Multi Media Speaker-2, HP Colour Printer and DC Eleminater set and wire S.L.No.MY 0211914J, CPU Mother Board Assembly, Digital Scan, Geniues S.C.No.97012905, Key Board Ritcomp, Part Wire Assembly, Floppy 43 and 12 bundles of black colour paper of the size of currency notes and the same were recovered by preparing Search List. Thereafter, A2 gave confession and produced one bundle of rupees 500 counterfeit currency notes and one bundle of rupees 100 counterfeit currency notes. From the accused, totally a sum of Rs.9,50,000/- counterfeit currency notes and computer accessories were recovered.

4. Thereafter, a case in Crime No.214 of 2002 was registered, for offence under Sections 489A, 489B, 489C, 489D and 120-B IPC. Later, the case was transferred to the file of CB-CID, Counterfeit Currency Wing, Chennai. On completion of investigation, charge sheet came to be filed before the learned VIII Metropolitan Magistrate, Egmore, Chennai. On committal, the case was tried by the learned II Additional Sessions Judge, Chennai in S.C.No.306 of 2008. Before trial Court, prosecution examined 10 witnesses and marked 24 exhibits and 21 materials objects. On completion of trial, the petitioner was convicted as stated above.

5. The learned counsel for the petitioner submitted that the Special Report [Ex.P1] was given by PW1 to PW7, who is the Inspector of Police, C-3 Sevenwells Police Station, Chennai. From the report [Ex.P1], it is seen that PW1 received secret information while he was on patrol duty, he reached Police Station, informed PW7. Thereafter, a Special Team was formed and search and seizure was conducted at the premises of the accused, which is artificial. The learned counsel further submitted that on receipt of the secret information, no FIR was immediately registered, only after securing the accused, FIR came to be registered. Hence, the very genesis of the case becomes doubtful. In this case, PW1 and PW7 are the police officials attached to C-3 Sevenwells Police Station and they had conducted major part of the investigation. The witnesses to the arrest, recovery and seizure/PW2 and PW6 not supported the case of the prosecution. In view of the same, the petitioner ought to have been acquitted.

6. The learned counsel for the petitioner further submitted that the petitioner has been arrayed as accused only on the basis of the confession of the co-accused. Apart from that, there is no materials

against him. It is admitted by the prosecution that the properties, which were seized from the scene of occurrence, reached the concerned Court with considerable delay, for which, no reason has been given. PW4, the Treasurer, Cash Department, Reserve Bank of India gave a letter [Ex.7] that the counterfeit currency notes sent to him are not genuine, for the reason that the notes are not printed in Intaglio, Watermark are fake, Security thread is missing with printed letters, paper quality is very poor and Imperfect printing of numbers on the notes. PW5, the Assistant Works Manager, India Security Press, Nashik, Maharashtra gave a report [Ex.P9] that on scrutinizing the seized counterfeit currencies that the numbering style differs from the original notes and there is no security line, lacks tint design details. Thus, from the reports, Exs.P7 & P9, it is found that there is some discrepancy found in the notes, these discrepancy cannot arise from the computer generated print out.

7.PW8, the Property Clerk of the Metropolitan Magistrate Court, George Town, Chennai forwarded Exs.P19 & P20 to the CB-CID Counterfeit Currency Wing, who forwarded the counterfeit currency notes to RBI and to India Security Press, Mumbai. In the Seizure Mahazar, the description and number of notes were not properly recorded. It is merely stated that the bundles of currencies were seized. It is further submitted that Ex.P24 is the Report of the Directorate of the Forensic Science, Ministry of Home Affairs, Hyderabad made on the computer, which was seized from the petitioner. From the report [Ex.P24], it is seen that Q1 to Q36 were forensically previewed and the images relevant to rupees 100 and rupees 500 counterfeit currencies were not found in the storage media, which would cut the root of the case. In view of the same, the petitioner ought to have been acquitted.

8.The counterfeit currency notes, which were seized from the accused marked as MO6 series. MO7 to MO19 are the Material Objects used for printing counterfeit currency notes. From the Forensic Report [Ex.P24], it is seen that MO6 series could be printed using MO7 to MO19. Added to it, PW2 and PW6, the witnesses for arrest, search and seizure of articles, not supported the case of the prosecution. Hence, there is no evidence and materials against the petitioner. The lower Court failed to look into these aspects and gave its own reason that the counterfeit currency notes impression in the storage media would have been deleted or tampered with which is nobodies case. On this wrong premise, the petitioner is convicted. Further, the petitioner is aged about 61 years and he was on bail during investigation and trial. The fine amount is paid. The co-accused, A2 and A3 was granted bail by this Court and hence prayed for granting bail for the petitioner.

9.The learned Government Advocate [Cr1. Side] appearing for the respondent submitted that the petitioner along with two other accused conspired together and printed counterfeit currency notes of rupees 100 and 500 denomination. PW1 received secret information, on receipt of the same, he informed his superior PW7. A special team was formed and they reached the house of the petitioner, from there, the counterfeit currencies were seized. Thereafter, on the

disclosure of A1, A3 and A2 were arrested. From the petitioner, 16 bundles of rupees 500 and two bundles of rupees 100 counterfeit currency notes and various electronics gadgets were seized. The accused were arrested and produced before the learned Magistrate. The seized articles were forwarded to Forensic Study and witnesses were examined from RBI and India Security Press. Both the witnesses clearly stated about the counterfeiting of currency notes. The electronic gadgets, which were seized from the petitioner sent to Central Forensic Laboratory, Ministry of Home Affaris, Hyderabad. After conducting study, they had given a report Ex.P24.

10.The learned Government Advocate [Crl. Side] further submitted that PW4 is the witness from Reserve Bank of India, PW5 is the Manager of the India Security Press. Since huge currencies notes were counterfeited, the case was transferred to the file of CBCID, Counterfeit Currency Wing, Chennai and the seized articles were sent to the Court immediately. PW8 is the Property Clerk, PW9 and PW10 are the Investigating Officers attached to the respondent Police.

11.Thus the trial Court on considering the evidence and materials had rightly convicted the petitioner and other accused. In this case, though the witnesses PW2 and PW6, not supported the case of the prosecution, it would not weaken the case. The trial Court on considering the age and ailments of the petitioner, had given a lenient view, despite prosecution proving its case.

12.This Court on considering the rival submissions and on perusal of the materials, it is seen that the petitioner was nabbed on the secret information. Thereafter, the search and seizure were conducted. The Recovery Mahazars were marked as Exs.P5 & P6. PW2 and PW6 are the witnesses for arrest, confession and recovery of the counterfeit currencies and other electronic gadgets from the place of the accused. These two witnesses have not supported the case of the prosecution.

13.PW1 and PW7 are the Sub Inspector and Inspector of Police in C-3, Sevenwells Police Station, Chennai. Further, the arrest, search and recovery of counterfeit currency notes [M06], as well M07 to M019 are not proved in the manner known to law, which causes a serious doubt in the case of the prosecution. Added to it, Ex.P24 is the Expert Opinion of Central Forensic Laboratory, Ministry of Home Affaris, Hyderabad. In the report, it is clearly stated that there is no recording of images for rupees 100 and 500 notes. In view of the same, there is no connecting materials against the petitioner. Thus, the trial Court had given a finding as though currency images in the storage media would have been deleted and tampered by the accused themselves, for which, there is no evidence. Further, there are several infirmities in the prosecution case and arguable points involved in the appeal. The lower Court already suspended the sentence of the petitioner and the appeal is not likely to be taken up for final hearing in the near future, hence, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

14. Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioner is directed to be enlarged on bail on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the learned II Additional Sessions Judge, Chennai, within a period of 15 days from the date of receipt of a copy of this order and on further condition that the petitioner shall appear before the said Court once in three month i.e., from January 2021 on the first working day of English Calendar Month at about 10.30 a.m., till the disposal of the appeal. The petition is ordered.

-sd/-

30/11/2020

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE II ADDITIONAL SESSIONS JUDGE,
CHENNAI.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
COUNTERFEITING CURRENCY WING,
CRIME BRANCH CENTRAL INVESTIGATION DEPARTMENT,
CHENNAI-2.

+2 C.C. to M/S.T.SHANMUGA BOOPATHI Advocate on payment of
necessary charges SR.NO.7892

Order

in
CRL MP.7376/2020

in
CRL A.476/2020

Date :30/11/2020

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