



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 08.01.2020

CORAM

THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI**

Crl.A.(MD)No.349 of 2019
and
Crl.MP(MD)No.6960 of 2019

Ravichandran : Appellant/Sole Accused

Vs.

State through
The Inspector of Police,
City Crime Branch, Police Station,
Tiruchirappalli District.
(In Crime No.14 of 2010)

: Respondent/Complainant

Prayer: Criminal Appeals filed under Section 374 of the Criminal Procedure Code against the judgment, dated 21.08.2015 passed by the I Additional District Judge (PCR), Tiruchirappalli, in SC No.105 of 2015.

For Appellant : Mr.R.Alagumani

For Respondent : Mr.V.Neelakandan
Additional Public Prosecutor

J U D G M E N T

This Criminal Appeal is directed against the judgment, dated 21.08.2015 passed by the I Additional District Judge (PCR), Tiruchirappalli, in SC No.105 of 2015.

2.The case of the prosecution is that on 07.05.2010, the accused paid a sum of Rs.15,000/- for purchase of two wheeler No.TML-9904 Bullet belongs to the complainant Rajendran, which was agreed to be sold to him for a total sum of Rs.23,000/-. The accused promised to pay the remaining amount on the same day evening and after receipt of the amount, the complainant got suspicion about the genuineness of the currency notes and with the assistance of witnesses, he handed over the accused to the police. The currency notes were sent to the forensic lab and after examination, it was found that it was counterfeit notes. The Inspector of Police attached to City Crime Branch, Tiruchirappalli has a final report against the accused examining the witnesses.



3. The trial court, on proper appreciation of the evidence both oral and documentary, found the accused guilty and convicted the appellant/Accused for the offence under section 489(B) IPC and sentenced him to undergo 10 years rigorous imprisonment and to pay a sum of Rs.3,000/- as fine and in default, to undergo six months rigorous imprisonment. Aggrieved over the same, the appellant/Accused is before this court.

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

5. The contentions raised on the appellant/accused are that the de-facto complainant has not properly deposed about the occurrence and there are contradictions in the evidence of the prosecution witnesses and the eye witnesses PW4 and PW5 turned hostile and they did not support the case of the prosecution and the Investigating Officer has not made search of the house of the accused and he has not made any investigation about who had originally supplied the fake currency and there was a delay in registering the case and no proper explanation was given for the delay in registering the case and hence, it is fatal to the prosecution and the motive behind the alleged occurrence was not proved by the prosecution witnesses and the prosecution witnesses are interested witnesses and no independent witness was deposed against accused and the accused is an innocent and he was falsely implicated in this case and prays that criminal appeal may be allowed.

6. PW1 is the complainant and he gave Ex.P1 complaint to the police. PW1 in his complaint and his evidence stated that prior to 5 years, one Raja asked his bike for price for his friend Ravichandran and he agreed to sell his motorcycle and on 07.05.2010, the accused Ravichandran paid sum of Rs.15,000/- as advance for purchase of two wheeler TML-9904 Bullet belongs to him, which was agreed to be sold to him for a total sum of 25,000/- and the accused promised to pay the remaining amount on the same day evening and after the amount received, he got suspicion about the genuineness of the notes and enquired the same, the accused tried to escape and with the assistance of his son Balamurugan and his friend, handed over the accused Ravichandran to the police and the notes were sent to the forensic lab and after examination, it was found that it was counterfeit notes.

7. PW2 is the son of PW1. PW2 during his evidence stated that the accused Ravichandran agreed to buy the motorcycle of his father for a sale consideration of Rs.25,000/- and the accused Ravichandran gave some amount to his father towards advance and on perusal of above amount, they found that they are fake notes and when he and his father questioned the same, the accused attempted to run away, however they caught hold and then they went to the police



station and his father gave the complaint to the police and they handed over the accused to the police. In this case, PW2 turned hostile and he did not support the case of prosecution.

8. On perusal of evidence of evidence PW2, it reveals that the accused agreed to purchase the motorcycle from PW1 for a sale consideration of Rs.25,000/- and the accused paid some amount towards advance and he and his father suspected the above currency notes given by accused are fake one. It is to be noted that even though PW2 turned hostile, his evidence cannot be rejected in toto as laid down in the decision reported in **2012(5) SCC 777 (Ramesh Harijan Vs. State of Uttar Pradesh)**. In that case, Hon' ble Supreme Court held as follows:-

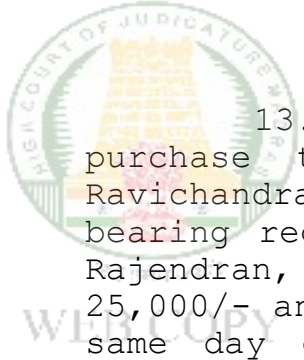
"It is a settled legal proposition that the evidence of prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examine him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent that their version is found to be dependable on a careful scrutiny thereof."

9. In this case also, PW2 categorically stated that the accused agreed to purchase the vehicle of his father and the accused paid some amount to his father towards advance and he and his father found that the currency notes given by accused are fake one.

10. In this case, the date of occurrence is 07.05.2010, but PW2 was examined on 03.08.2015. Due to lapse of five years, it is not possible for PW2 to depose about the denomination of the currency notes given by the accused, which are all fake notes. Hence from the evidence of PW2, it reveals that by way of oral sale agreement, the accused agreed to purchase the two wheeler from PW1 and paid advance for the purchase of above vehicle. Hence PW2 even though turned hostile, his evidence cannot be rejected in toto.

11. Further, the learned counsel for the Appellant/accused argued that PW1 and PW2 are interested witnesses and no independent witnesses examined to support the case of prosecution. Hence it is fatal to the prosecution.

12. In this case, PW4 and PW5 cited as occurrence witnesses, but they turned hostile and did not support the case of prosecution. But PW1 and PW2 deposed that on the basis of the oral sale agreement between PW1 and the accused, the accused agreed to buy the motor bicycle from PW1 for a sale consideration of Rs. 25,000/- and on 07.05.2010, he paid Rs.15,000/- as advance and after perusal of the above currency notes, PW1 and PW2 found that currency notes given by the accused are fake one. On careful perusal of the evidence of PW1 and PW2, they are cogent and trust-worthy. Hence it is held that their evidence can be relied upon.



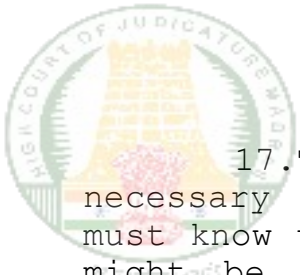
13. The case of the prosecution is that the accused agreed to purchase the vehicle of PW1 and on 07.05.2010, the accused Ravichandran paid Rs.15,000/- for purchase of the two wheeler bearing registration No.TML-9904 Bullet belongs to the complainant Rajendran, which was agreed to be sold to him for a total sum of 25,000/- and the accused promised to pay the remaining amount on the same day evening and after receiving the remaining amount, the complainant got suspicion about the genuineness of the notes and with the assistance of his son Balamurugan and his friend, he handed over the accused Ravichandran to the police and the notes were sent to the Forensic Lab and after examination, it was found that they are counterfeit notes.

14. In this case, no contra evidence was let in on the side of the accused to disprove the case. At this juncture, it is necessary to refer section **489(B) of IPC**, which would run thus:-

"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."

15. PW1 and PW2 clearly deposed that the accused Ravichandran alone handed over Rs.15,000/- forged notes for purchase of two wheeler and they handed over him to the police, after PW1 found that the amount handed over by the accused are fake currency notes. The accused was produced none other than by the complainant along with counterfeits notes, he was caught red handed by PW1 and PW2 and produced before the police and immediately, he was arrested. But the accused was not in a position to disprove the case by proving that it was not produced by him to PW1 and PW2 or he has not possessed the notes or he has possessed the notes without knowing the same as genuine.

16. On careful perusal of the evidence of the witnesses and documents produced, it reveals that the accused was found with counterfeits notes and knowingly using the same in the market by giving advance in a sale transaction. If the prosecution is able to establish that the accused was in possession of counterfeit currency notes, it is the duty of the defence to disprove the same. However, defence could not establish that it was not possessed by him or possessed without knowledge. He failed to prove the same. However the prosecution clearly proved the case beyond reasonable doubt that he intended to use the forged or counterfeit currency notes, knowingly fully well that the currency notes were counterfeit. The prosecution also proved that the accused intended to use the same on public.



17. To prove the offence under section 498(B) IPC, it is necessary that the accused should possess the forged notes and he must know that he intended to use the forged note as genuine and it might be used as genuine. Here it is proved that the accused possessed the note and he tried to circulate the same to the public that after knowing the same he used it as genuine by purchasing a bike. One of the witnesses in the confession turned hostile, but both PW1 and PW2 properly deposed about the arrest, recovery. Hence, it is not fatal to the prosecution. It is to be noted that the minor discrepancies, loss of memory due to lapse of time will not affect the prosecution case.

18. For all the reasons stated above, this court is of the considered view that the findings rendered by the trial court does not require any interference by this court. Accordingly the judgment of the trial court is confirmed. However, considering the fact that the appellant/accused is the sole breadwinner of the family, the punishment imposed on the appellant/accused requires modification.

19. In the result, the Criminal Appeal is **partly allowed**. The punishment imposed on the appellant/accused for the offence under section 489(B) IPC is reduced to **4 years RI**. In respect of the fine amount, the findings of the trial court is confirmed. The period of sentence, if any, already undergone by the appellant/Accused shall be given set off under section 428 of Cr.P.C. If the appellant/accused had already undergo four years incarceration, he may be set at liberty, forthwith, unless his detention is required in connection with any other case. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

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Sub Assistant Registrar(CS)

To,

1. The I Additional District Judge (PCR), Tiruchirappalli.

2. The Judicial Magistrate, Trichy.

3. The Inspector of Police,
City Crime Branch, Police Station,
Tiruchirappalli District.

<https://hcservices.ecourts.gov.in/hcservices/>

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



5.The Superintendant, Central Prison, Trichy.
(In duplicate for communication to the Accused)

6.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.R.ALAGUMANI, Advocate (SR-845[F] dated 08/01/2020)

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08.01.2020

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