BAIL SLIP

The Appellant / Accused namely R.Velusamy, S/o.M.Ramachandran was directed to be released on bail in and by the order of this Court dated 22.07.2008 and made in M.P.No.1 of 2008 in Crl.A.No.543 of 2008 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2021

CORAM

THE HON'BLE Mr. JUSTICE C.V.KARTHIKEYAN

Crl.A.No. 543 of 2008
And
M.P.No. 1 of 2008

R.Veluswamy ...Appellant/Accused (1)

Vs.

State Represented by
Inspector of Police,
CBCID, Chennai -2. ...Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 (2) Cr.P.C., against the Judgment of the learned VI Additional Sessions Judge at Chennai in S.C.No. 366 of 2007 dated 15.07.2008 convicting the appellant under Section 489(C) of IPC and sentencing him to undergo three years RI and to pay a fine of Rs.2000/- and in default to undergo 6 months SI.

For appellant : Mr. A.M.Rahamath Ali

For Respondent : Mr. E.Raj Thilak
Additional Public Prosecutor

ORDER

The present Criminal Appeal filed by the first accused who had been convicted under Section 489C of IPC by the VI Additional Sessions Judge, Chennai, by Judgment dated 15.07.2008 in S.C.No. 366 of 2007.

2. The Additional Chief Metropolitan Magistrate, Egmore, Chennai, had committed P.R.C.No. 83 of 207 to the Court of

Sessions and S.C.No. 366 of 2007 was made over to the VI Additional Sessions Court at Chennai. Originally, CBCID, Counterfeit Currency Wing, Chennai had registered Crime No. 11 of 2005 against two accused, namely, Velusamy and Selvakumar @ Selvam under Sections 489(B) and 489 (C) IPC, pursuant to a special report given by PW-1, Venkatesan, who was Sub Inspector of Police, Counterfeit Currency Wing, CBCID, Chennai.

3. In the special report, marked as Ex.P-1 dated 11.08.2005, PW-1 stated that he had received information from an informant that Counterfeit notes were to be circulated near Casino Theatre in Chennai which information he received at 8.30 am on 11.08.2005. He thereafter went along with the informant and four other constables to Casino Theatre and when he was conducting surveillance at around 11 a.m., the informant pointed out the first accused. PW-1 enquired with the first accused, who did not give proper answers and therefore he conducted a search of the first accused and recovered 20 numbers of Rs.50/- currency notes. He stated that the first accused confessed that they were Counterfeit notes and he had kept them for the purpose of circulating them. PW-1 stated that he then arrested the first accused and with the informant and the police constables went to the police station and gave a special report at 12.30 p.m. The Inspector of Police had also seized the counterfeit notes under Form-95, which was marked as Ex.P-2. Thereafter, when enquired the first accused said that he had got the counterfeit notes from the second accused.

4. During cross examination, a specific suggestion was put to PW-1 with respect to taking the assistance of independent witness for the arrest of first accused and seizure of the counterfeit notes in the possession of the first accused. However, he stated that the general public did not come forward to witness either the arrest or the seizure of counterfeit notes. He stated that he thereafter conducted search of the first accused. He denied suggestions that he did not arrest the first accused and did not seize the counterfeit notes at that place which he mentioned.

5. In the police station, the first accused gave a confession statement and the signatures of PW-2 and PW-3 in the confession statement were marked as Exs. P-3 and P-5. It must be pointed out that the admissible portion in the confession had not been marked by the learned Trial Judge. On the basis of the confession, it is the case of the prosecution that they went to the house of the first accused and seized further 31 numbers of Rs.50/- currency notes. All these notes were forwarded by letters from the Additional Chief Metropolitan Magistrate to the currency notes press under Ex.P9 and P11 dated 14.10.2005 & 22.02.2005. The reports from the Currency Note Press at Nashik,

were marked as Ex.P-8 dated 29.12.2005 and as Ex.P-10 dated 26.04.2006. Two witnesses in this regard were also examined, namely, PW-6 and PW-7. Their reports stated that the notes seized were actually counterfeit notes.

6. The counterfeit notes numbering 51 recovered from the first accused, namely, 20 notes from near Casino Theatre and 31 notes from his residence were produced as MO-1. The First Information Report was marked as Ex.P12. On the basis of the final report, first and second accused were charged with commission of offence under Section 489(B) and 489 (C) IPC. After trial, the second accused was acquitted all charges. The first accused was convicted for offence under Section 489 (C) and acquitted for offence under Section 489(B) IPC. He was sentenced to 3 years Rigorous Imprisonment and to pay a fine of Rs.2000/- , in default to undergo 6 months Simple Imprisonment. Questioning that conviction and sentence, the first accused has filed the present Appeal.

7. Heard Mr. A.M.Rahamath Ali, learned counsel for the appellant and Mr.E.Raj Thilak, learned Additional Public Prosecutor, for the respondent.

8. I had called for the original records because a very disturbing aspect had emanated during the course of arguments.

9. It is the specific case of PW-1, who went along with the informant and four other constables at 11.08.2005 to Casino Theatre on specific information that there was attempt to circulate counterfeit notes at that particular place. The informant pointed out the first accused. PW-1 then accosted the first accused, and enquired him and since he did not answer properly to the questions put, PW-1 conducted a search of the first accused and recovered what later were confirmed to be counterfeit notes of Rs.50/- each totalling 20 numbers. During the course of examination, PW-1 stated that independent witnesses did not come forward to witness the said search but nothing prevented PW-1 from taking the assistance of the police constables. There is no record for seizure of the currency notes at that particular place by PW-1.

10. It is also the specific case of PW-1 that he effected the arrested of the first accused at that very place. He denied suggestions that he did not arrest and did not seize the notes at that particular place. He reiterated that he did arrest the first accused at that particular place and he did seize 20 notes of Rs.50/- each from the first accused. There is no arrest memo produced. There is no seizure memo produced.

11. Thereafter, PW-1 filed a special report which was marked Ex.A-1. In this special report it was also mentioned that the first accused was arrested near Casino Theatre and that counterfeit notes were seized at that particular time itself. Again there is no record to prove actual arrest of the first accused and seizure of the notes.

12. On the basis of the special report, First Information Report was registered, namely, Crime No. 11 of 2005 by CBCID, CC Wing, Chennai, under Sections 489(B) and 489(C) IPC. Thereafter, a confession of the first accused is recorded. The admissible portion of the confession was not at all marked during the course of trial. On the basis of such confession, the Investigating Team had gone over to the house of the first accused and recovered 31 further notes of Rs.50/- each. But when there is no record to show material regarding the discovery of the fact that the first accused had further notes in his house, the said recovery will necessarily have to be viewed with askance. This throws a doubt in the case of the prosecution primarily because, there is no record for arrest, there is no record for seizure of 20 notes of Rs.50/- each from the first accused, there is no record of the confession said to have been given by the first accused indicating that he had further notes in his house. This would also bely the further case of the prosecution that 31 further notes were recovered from the house of the first accused. Possession of the notes itself is shrouded with suspicion.

13. In the Tamil Nadu Police Standing Orders in Chapter XXXII relating to arrest and custody, PSO 622 is as follows:-

> “Discretion to arrest in cognizable case
>
> A Police Officer has discretion whether, or not, to arrest a person of his won motion, in a cognizable case and in instances where the position of the accused person and the nature of the charge against him render his arrest without warrant an unjustifiable hardship, application should be made to the Magistrate to issue a process for his appearance.
>
> G.O.M.s,No. 1782, Judl. 30th August 1876, and paragraph 155 of Police Commission report.)”

14. PSO No. 635, ILL - treatment by the Police is as follows:-

> "Directly an accused person is placed under arrest, the Investigating Police Officer shall, as the first step in the police investigation, ask him whether he has any complaint to make of ill-treatment by the police and shall enter in the case diary the question and answer. If an allegation of ill-treatment is made, the investigating officer shall there and then examine the prisoner's body, if the prisoner consents, to see if there are any marks of ill-treatment and shall record the result of his examination. If the prisoner refuses to allow his body to be examined, the refusal and the reasons therefor shall be recorded. If the Investigating Officer finds that there is reason to believe the allegation of ill-treatment, he shall at once so far suspend the investigation on which the prisoner has been arrested and to forward the prisoner with his complaint, the record of corporal examination, any other evidence available, and, if possible the Police Officer implicated by the prisoner's complaint to the nearest Magistrate having jurisdiction to enquire into the case.
>
> (Government.Memo. 9277 / A3/ Judl 31st Aug. 1911)"

15. There is record to show that the first accused was arrested. There is no record to show that at the police station, the Investigating Officer had followed the aforesaid procedure. As a matter of fact, the Investigating Officer or the complainant / PW-1 had not followed any procedure as established by law. Once the arrest and seizure of currency notes fail, the conviction of the first accused for offence under Section 489(C) IPC has to necessarily suffer interference.

16. Section 489(C) IPC is as follows:-

> "489C. Possession of forged or counterfeit currency-notes or bank-notes.—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, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.] ".

17. The main ingredient of Section 489(C) is possession of counterfeit notes. It is the burden of the prosecution to prove possession. This can be established only when there is necessary record to show that the accused was in possession and that the counterfeit notes were recovered or seized from his possession.

18. In the instant case, there is no record to show that 20 numbers of counterfeit notes of Rs.50/- each were seized from the possession of the accused at Casino Threatre on 11.08.2005. There is no record to show he had confessed to the further fact that counterfeit notes were also available in his house. Without that foundation, the case of the prosecution that further notes were seized from the house of the accused will necessarily have to fail. During the course of trial, the admissible portion of the confession of the first accused was not at all marked. When these glaring procedural irregularities striking at the heart of the prosecution case are found, naturally this Court will necessarily have to interfere with the conviction directed against the first accused.

19. In Bhagwan Singh and others Vs. State of Madhya Pradesh, (2002) 4 SCC 85, the Hon'ble Supreme Court held as follows:-

> "the golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favorable to the accused should be adopted."

20. In this case as stated, the pendulum swings in favour of the appellant/A-1 because neither has arrest been established nor has seizure been established.

21. In view of the above reasons, the conviction against the first accused will have to be set aside. The Criminal Appeal is allowed and the conviction and sentence imposed by the Trial Court is set aside. Consequently, connected Miscellaneous Petition is closed. The fine amount if any is to be refunded to the appellant. The bail bond executed shall stand discharged. The currency notes seized, namely, MO1 and MO2 series are directed to be sent to the Currency Printing Press, Nashik, for proper destruction as per law after appeal time is over.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

vsg

To

1.The VI Additional Sessions Judge,
Chennai.

2.(do thorough) The Principal Sessions Judge,
Chennai (for information)

3.The Additional Chief Metropolitan Magistrate,
Egmore, Chennai.

4.(do through) The Chief Metropolitan Magistrate,
Egmore, Chennai.

5.Inspector of Police,
CBCID, Chennai - 2.

6.The Superintendent,
Central Prison,
Puzhal, Chennai.

7.The Public Prosectuor,
High Court,
Madras.

Copy To

1.The Currency Printing Press,
Nashik.

2.The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to M/s.K.R.Samratt, Advocate, S.R.No.48022

Crl.A.No. 543 of 2008
And
M.P.No. 1 of 2008

KSM(CO)
RMV(07/10/2021)