

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 87 OF 2014**

- 1) Ravi @ Dhiren @ Jadhav Ruby Ghosh
 - 2) Nuruddin Islam Bari
 - 3) Mohamed Aijul Mohammed Sarali Shaikh
 - 4) Azraul Tamez Shaikh
- ...Appellants / (Original
Accused Nos. 1, 2, 4 & 6)

Versus

National Investigating Agency (N.I.A) ...Respondent

AND
CRIMINAL APPLICATION NO. 1278 OF 2015
AND
CRIMINAL APPLICATION NOS. 625, 1177 AND 103 OF 2016
AND
CRIMINAL APPLICATION NOS. 692 AND 438 OF 2017
AND
CRIMINAL APPLICATION NO. 1077 OF 2018
AND
CRIMINAL APPLICATION NO. 624 OF 2019

**WITH
CRIMINAL APPEAL NO. 529 OF 2015**

Abdul Asuruddin Shaikh ...Appellant / (Original
Accused No. 5)

Versus

National Investigating Agency (N.I.A) ...Respondent

AND
INTERIM APPLICATION NO. 1501 OF 2021
AND
CRIMINAL APPLICATION NO.1279 OF 2015
AND

All these Appeals were therefore heard together and are being disposed of by this common judgment.

2. The Appellants, who were accused Nos.1 to 6 before the Trial Court were charged and tried for the offences punishable under Sections 489-B, 489-C, 489-E and 120-B of the Indian Penal Code, 1860 (IPC) and Sections 16, 17 and 18 of the Unlawful Activities (Prevention) Act, 1967 (for short “UA(P) Act”).

3. By the impugned judgment and order, the Trial Court convicted the accused Nos.1 to 6:

(i) For the offence punishable under Section 489-B of the IPC and sentenced them to suffer imprisonment for life and to pay fine of Rs.1000/- each;

(ii) For the offence punishable under Section 489-C of the IPC and sentenced them to suffer imprisonment for 7 years and to pay fine of Rs.500/- each;

(iii) For the offence punishable under Section 489-E of the IPC and sentenced them to pay fine of Rs.100/- each;

(iv) For the offence punishable under Section 16(1)(b) of UA(P) Act and sentenced them to suffer imprisonment for life and to pay fine of Rs.1000/- each; and

(v) For the offence punishable under Section 18 of the UA(P) Act read with 120-B of the IPC and sentenced them to suffer imprisonment for life and to pay fine of Rs.1000/- each.

The Trial Court, however, acquitted the accused Nos.1 to 6 for the offence punishable under Section 17 of UA(P) Act.

4. According to the prosecution, on 14 May 2009, PW-1 Sanjay Patil, who at the relevant time was working as Head Constable with Anti Terrorist Squad (for short "ATS"), received a secret information that on the same day at about 13.30 hours accused Nos.1 and 2 would be coming to deliver counterfeit Indian currency notes to accused Nos.3 and 4 near Star Cinema, Barrister Nath Pai Marg, Mazgaon, Mumbai. PW-1 took the said informer to Senior Police Inspector Shri.Khanwilkar and apprised him about the said information. He, thus formed a trap squad to apprehend the accused. The trap squad reached to the place disclosed by the informer at about 13.00 hours. At about 13.45 hours, accused Nos.1 and 2 arrived at the spot. After few minutes, accused Nos.3 and 4 came there. As the activities of accused Nos.1 to 4 were found to be suspicious they were encircled by the trap squad. Sr. PI Khanwilkar thereafter disclosed his identity to accused Nos.1 to 4. Two panch witnesses were then called. Accused Nos.1 to 4 were asked as to whether they wish to take personal search of trap squad and panch witnesses. The accused Nos.1 to 4 declined to take personal search of trap squad and panch witnesses. According to the prosecution, then personal search of accused Nos.1 to 4 was taken in presence of panch witnesses. During the personal search of accused Nos.1 to 4:

(i) 200 counterfeit currency notes of Rs.1000/-

denomination of 2AQ and 8AC series were found in possession of accused No.1;

(ii) 100 counterfeit currency notes of Rs.1000/- denomination of 2AQ series were found in possession of accused No.2;

(iii) 23 counterfeit currency notes of Rs.1000/- denomination were found in possession of accused No.3; and

(iv) 22 counterfeit currency notes of Rs.1000/- denomination of 2AQ series were found in possession of accused No.4

5. According to the prosecution, accused No.1 during the course of investigation disclosed that he received counterfeit Indian currency from wanted accused No.7 Shaukat Shaikh, the resident of State of Jharkhand, for circulating in Mumbai market. He further disclosed that he had supplied counterfeit currency notes to accused Nos.5 and 6 for circulation in Mumbai market. Pursuant to said disclosure statement, accused Nos.5 and 6 were arrested on 23 May 2009. According to the prosecution, two counterfeit currency notes of Rs.1000/- denomination and 25 counterfeit currency notes of Rs.500/-denomination came to be recovered at the instance of accused No.5. As regards accused No.6, it is alleged that his personal search was taken at the time of his arrest and four counterfeit currency notes of Rs.1000/- denomination were found in his possession.

6. According to the prosecution, during the course of investigation, it was found that on 11 May 2009, the accused No.5 had deposited Rs.25000/- in the bank account of one Shamsuddin Miya who according to the prosecution is brother of accused No.2. Bank statement of said Shamsuddin Miya was obtained and it was found that large amount was deposited in his account from 19 March 2009 to 11 May 2009. It was further found that the amount of Rs.25000/- was withdrawn on 12 May 2009 through ATM at Malda. The call record of mobile phone of said Shamsuddin Miya was obtained and it was found that he was in touch with accused Nos.1 to 4 and wanted accused No.7 during the period from January 2009 to May 2009. According to the prosecution, during the course of investigation it was further found that accused No.5 had deposited more than Rs.2 Crore in the bank accounts of his brother-in-law Bhondu T. Shaikh during the period from 29 November 2008 to 22 May 2009 and the *modus operandi* was to deposit less than Rs.50,000/-. It was also found that said Bhondu Shaikh used to immediately withdraw the said amount again through ATM at Malda.

7. According to the prosecution, at the relevant time several cases relating to recovery of counterfeit currency notes were registered all over the country. Thus, after taking permission of respective courts, the samples of counterfeit currency notes were

collected and the same were sent to the Chairman and Managing Director, Security Printing and Minting Corporation of India Limited. According to the prosecution, Security and Printing and Minting Corporation of Indian Limited has opined that the currency notes were printed on highly sophisticated machines which a common man cannot acquire since such machines involve huge capital investment. The pulp was found to be 100 % rag which is normally used for making genuine currency paper. It was also opined that the perfection of window and watermark formation indicates the manufacture of counterfeit currency paper on regular currency making machines which can only be owned by country/State. According to the prosecution, during the course of investigation it was found that the counterfeit currency notes found in possession of accused Nos.1 to 6 and in all other cases were printed in Pakistan.

8. It was thus alleged against the accused Nos.1 to 6 that they along with wanted accused No.7 hatched the conspiracy and pursuant to the said conspiracy they smuggled high quality counterfeit Indian paper currency notes with intent to circulate them in Indian market as genuine Indian paper currency notes. According to the prosecution, the accused did so with intent to cause damage to the monetary stability of India.

9. The Trial Court, on the basis of evidence on record, recorded the following findings:

“148. There are absolutely no omissions or contradictions on record. The defence raised by the accused appears to be improbable, unbelievable and unacceptable. The prosecution by its cogent, convincing and trustworthy evidence has proved beyond all reasonable doubts that on 14/5/2009 accused Nos.1 to 4 were found in conscious possession of FICN denomination of Rs.1000 of 2AQ and 8AC series. The prosecution has also succeeded in establishing that on 23/5/09 accused No.5 and 6 were also found in conscious possession of 2 FICN of Rs.1000 denomination and 25 FICN of Rs.500 denomination of 2AQ and 9BR series respectively. It is further established that the accused were intending to use and had used the FICN as genuineness currency notes by trafficking the same with the sole purpose of committing a terrorist act with an intention to de-stabilize the Indian economy and to threaten the unity, integrity, security and sovereignty of India and so also to strike terror in the people. I, therefore, hold accused Nos.1 to 6 guilty of the offences punishable under Secs.489(C), 489(B), 489 (E) r/w. 120(B) of the I.P.C. and also under Sec.16 and 18 of Unlawful Activities (Prevention) Act, 1967. All the accused Nos.1 to 6 are acquitted of the offence punishable under Sec.17 of Unlawful Activities (Prevention) Act, 1967.”

10. We have heard the learned counsel for the Appellants, the learned Special Public Prosecutor for NIA and the learned APP for the State.

11. The prosecution in order to prove the receipt of secret information, trap and recovery of counterfeit currency from the

accused Nos.1 to 4 has examined PW-1 Sanjay Patil, PW-2 Sandeep Palve (Trap Panch witness) and PW-9 Popat Avhad (member of trap squad and investigating officer till investigation was with ATS).

12. The learned counsel for the accused Nos. 1 to 4 made the following submissions :

(i) The prosecution has not produced any contemporaneous documents in relation to the alleged secret information in the form of station diary or pre-trap panchanama. Thus the very foundation of the prosecution case is doubtful.

(ii) The prosecution case cannot be believed for the reason that the accused Nos.1 and 2 would not choose public place to deliver counterfeit currency notes.

(iii) There was a large crowd at the theater near the spot. However, nobody was asked to act as panch witnesses and one of the members of the trap squad was sent to bring panch witnesses, who brought them 10 minutes after the accused Nos.1 to 4 were allegedly apprehended. Thus there was plenty of time for the trap squad to plant alleged counterfeit currency notes on the person of accused Nos.1 to 4.

(iv) The trap squad was under an obligation to offer their

personal search to the accused Nos.1 to 4 to ensure that they were not carrying any incriminating material. The trap panchanama at Exhibit-68 does not show any such offer was made by the trap squad to accused Nos.1 to 4. On the contrary, PW-2 panch witness has admitted that in his presence no such offer was given to the accused Nos.1 to 4.

(v) The version of PW-1, PW-2 and PW-9 is not consistent. PW-1 and PW-2 stated that ASI Jadhav scribed the panchanama Exhibit-68 sitting on the ground whereas according to PW-9, he was sitting on the platform. According to PW-1 and PW-2 the trap squad on apprehending accused Nos.1 to 4 stood in silence until arrival of panch witnesses, i.e., for 10 minutes and on arrival of panch witnesses they were asked their names. Whereas according to PW-9, Senior Police Inspector Khanwilkar was interrogating accused Nos.1 to 4 while waiting for panch witnesses to arrive and he has specifically denied that they were standing in silence.

(vi) The prosecution case that the trap squad stood in silence until the arrival of panch witnesses for 10 minutes is hard to believe.

(vii) PW-2 has admitted that he resides near ATS office. This fact casts doubt on entire prosecution case.

(viii) The alleged secret information was that accused Nos.1 and 2 would be coming to hand over counterfeit currency to accused Nos.3 and 4. PW-9 has admitted that they did not see any of the accused handing over any articles to each other. Then the case of the prosecution that the counterfeit currency notes were found in possession of all the accused Nos.1 to 4 is self contradictory.

(ix) The prosecution has not examined the material witnesses, i.e., Senior Police Inspector Mr. Khanwilkar who allegedly led the trap squad, ASI Vikas Jadhav, who scribed the panchanama Exhibit-68 and Police Constable Chavan who brought the panch witnesses to the spot of trap.

(x) The Trial Court was thus not justified in arriving at the findings that the accused Nos.1 to 4 were found in conscious possession of counterfeit currency.

(xi) In the alternative, it is submitted that the prosecution has led no evidence to show that the accused Nos.1 to 4 were aware that the currency allegedly in their possession was counterfeit currency. On the contrary, none of the accused persons made any attempt to flee from the spot when they were encircled nor did they made any attempt to get rid of alleged counterfeit currency which indicates that they were not aware that the currency in their possession was counterfeit currency notes.

(xii) The prosecution has led no evidence as to the attempts or intention to circulate the alleged counterfeit currency and therefore, the only offence which can be said to have been proved against the accused Nos.1 to 4 is under Section 489-C of the IPC and not Section 489-B of the IPC. Thus even taking the prosecution case at its highest, the accused Nos.1 to 4 can only be convicted under Section 489-C of the IPC, which carries maximum sentence of 7 years which they have already undergone.

(xiii) The decisions in the case of *Shaikh Nazir vs. State of Maharashtra*¹ and *Noor Islam vs. State of Maharashtra*² have been relied upon in support of submission that it was obligatory on the part of the trap squad to offer their personal search to the accused.

13. On the other hand, learned Special PP submits that the evidence of PW-1, PW-2 and PW-9 with regard to the recovery of counterfeit currency notes from the possession of accused Nos.1 to 4 is consistent. The evidence of PW-1 and PW-9 cannot be treated with suspicion just because they are police officials. It is submitted that a huge amount of counterfeit currency, i.e., 345 notes of Rs.1000/- denomination came to be recovered from the accused Nos.1 to 4 for which they have not given any explanation. The

1 (2018) SCC OnLine Bom 2082

2 (2016) SCC OnLine Bom 5018

learned Trial Court was thus justified in arriving at the finding that the accused Nos.1 to 4 were found in conscious possession of counterfeit currency notes.

14. We have perused the evidence on record. According to PW-1 on 14 May 2009, he received the secret information that accused Nos.1 and 2 would be coming near Star Cinema, Mazgaon, Mumbai to deliver counterfeit currency notes to accused Nos.3 and 4. He apprised about the said information to Senior Police Inspector Khanwilkar who constituted the trap squad to apprehend the accused Nos.1 to 4. The submission of learned counsel for the accused Nos.1 to 4 is that the prosecution has not produced any contemporaneous document in relation to the said information in the form of station diary or pre-trap panchanama. However, according to PW-1, it was secret information. It is not brought on record that even in respect of secret information an entry is required to be taken in station diary or for that matter pre-trap panchanama is required to be prepared. In absence of such requirement, the prosecution case cannot be doubted on that ground.

15. According to PW-1 and PW-9 pursuant to secret information trap was laid and the accused Nos.1 to 4 were apprehended. During the personal search of accused Nos.1 to 4 counterfeit currency notes were found in their possession. The evidence of PW-2 as regards

recovery of counterfeit currency notes is consistent with the evidence of PW-1 and PW-9.

16. It is not the defence of the accused Nos.1 to 4 that the currency which was found in their possession was a genuine currency. The defence of accused Nos.1 to 4 is of false implication. This is, however, not the case of two rival parties that they would involve each other in a false criminal case. In a case for such a serious offences, if according to the accused Nos.1 to 4, they were falsely implicated, then it was necessary for them to bring on record the motive for such false implication. In absence of such motive, the evidence of PW-1, PW-2 and PW-9 cannot be disbelieved especially when huge counterfeit currency notes were found in possession of accused Nos.1 to 4.

17. PW-1 and PW-9 have stated that they did ask the accused Nos.1 to 4 whether they wish to take search of trap squad and panch witnesses, however, it was declined. Considering the fact that huge counterfeit currency notes were found in possession of accused Nos.1 to 4, non-mentioning of the fact that search was offered, in trap panchanama or admission of PW-2 that no search was offered in his presence would not vitiate the whole prosecution case. Even otherwise just because search was not offered that by itself is not sufficient to draw an inference that counterfeit currency notes were

planted. Even in the decision in the case of *Noor Sadik (supra)* it was considered as one of the circumstances to grant benefit of doubt to the accused therein as it was not the case of recovery of huge amount of counterfeit currency and thus it was observed that 32 currency notes of Rs.1000/- which would not be a volume not possible to plant.

18. It is submitted that though there was a crowd at the cinema theater, however, nobody from the said crowd was asked to act as panch witness and PW-2 was brought from Dockyard Station 10 minutes after the accused Nos.1 to 4 were allegedly apprehended. However, ordinarily people do not wish to act as panch witnesses. The evidence of PW-2 thus cannot be doubted on that ground or on the ground that he was residing near ATS office. There is nothing to disbelieve the evidence of PW-2. Considering the overall facts and circumstances, minor discrepancies in the evidence of PW-1, PW-2 and PW-9 would not make them unreliable.

19. It is well settled that it is the quality of evidence, which is material and quantity of evidence was never considered to be a test for deciding a criminal trial and emphasis of court is always on quality of evidence. Therefore, no adverse inference can be drawn just because the prosecution has not examined other members of the trap squad.

20. Considering the overall evidence on record, the circumstances like, the accused Nos.1 to 4 would not choose public place to deliver the counterfeit currency notes or it is not natural that the trap squad would remain silent until the arrival of panch witnesses for 10 minutes are, in our view, not sufficient to doubt the prosecution case.

21. As stated earlier, it is not the defence of the accused that the currency notes which were found in their possession were genuine currency. Even otherwise the prosecution to prove that the currency notes which were found in the possession of accused Nos.1 to 4 were counterfeit currency notes, has examined expert witnesses, i.e., PW-17 Mrs. Pratibha Raghwan, Dy. Manager of RBI, PW-24 Manjunath, General Manager, Bhartiya Reserve Bank Note Mudran Pvt. Ltd. Mysore, PW-25 Malenhalli Bylappa, Dy. General Manager, Bank-Note Press, Devas. No serious challenge is raised to their evidence in cross-examination.

22. The Trial Court was thus justified in arriving at the finding that the accused Nos.1 to 4 were found in possession of counterfeit currency notes.

23. In the alternative, it is submitted that the accused Nos.1 to 4 did not try to flee away from the spot nor did they try to get rid of

alleged counterfeit currency notes which shows that they were not aware of the fact that the currency notes in their possession were counterfeit currency notes. The submission cannot be accepted in absence of any such defense and on the contrary from the defense of denial, the inevitable inference which can be drawn is that they were aware about the said fact.

24. It is further submitted that there is no evidence to show that the intention of the accused Nos.1 to 4 was to circulate the alleged counterfeit currency notes. There cannot be direct evidence to that effect. The fact that the accused Nos.1 to 4 were found in possession of a huge amount of counterfeit currency by itself is sufficient to draw that inference. The Trial Court was therefore, right in convicting the accused Nos.1 to 4 for the offences punishable under Sections 489-B, 489-C and 489-E of the IPC.

25. As regards the accused Nos.5 and 6, the prosecution case is that accused No.1 had disclosed his memorandum statement that he had supplied counterfeit currency notes to accused Nos.5 and 6 for the purpose of circulating in Mumbai and Thane. The accused Nos.5 and 6 were arrested on 23 May 2009 and counterfeit currency notes were recovered from their possession.

26. According to PW-9, during investigation it was revealed that wanted accused No.7 was sending him counterfeit currency notes.

According to PW-9 pursuant to disclosure statement of accused No.5, the counterfeit currency of Rs.14,500/-came to be recovered at his instance from his shop. The evidence of PW-3 Nasurudin Khan, the panch witness on recovery of counterfeit currency at the instance of accused No.5 is consistent with PW-9.

27. The learned counsel for accused No.5 has made the following submissions:

- (i) Timing of arrest is not mentioned in arrest panchanama.
- (ii) The shutter of shop was partially opened and there is no evidence that it was in exclusive possession of accused No.5. Therefore, it would not be safe to rely on alleged recovery.
- (iii) PW-3 has admitted that PW-9 has disclosed to him that accused No.5 was arrested on 14 May 2009, whereas according to PW-9 he was arrested on 23 May 2009.

28. On the other hand, learned Special PP submits that the recovery of counterfeit currency notes at the instance of accused No.5 cannot be doubted in view of stray admission of PW-3. It is submitted that there is an evidence on record which would show that accused No.5 had deposited huge amount in the bank account of his brother in law Bondhu T. Sheikh and there is no explanation in relation to said deposit. It is submitted that the defence of false implication cannot be accepted as he was arrested pursuant to disclosure statement of accused No.1.

29. It is not the defense of the accused No.5 that he was arrested on 14 May 2009. The defense is of false implication. However, no motive is attributed to PW-9 for alleged false implication. On the contrary, PW-9 arrested him pursuant disclosure statement of accused No.1 In addition to counterfeit currency notes, bank deposit slips were recovered at the instance of accused No.5. There is no explanation as to why the amount of Rs.2 Crore was deposited in the bank account of Bhondu T. Shaikh. Considering the overall evidence on record, the Trial Court was right in convicting the accused No.5 for the offences punishable under Sections 489-B, 489-C and 489-E of the IPC.

30. As regards the accused No.6, the case of the prosecution is that four currency notes of Rs.1000/- denomination were found in the possession of accused No.6 at the time of his arrest. The prosecution has, however, not examined the police officer who arrested him and there is no explanation for his non-examination. It is not the case of prosecution that the accused No.6 like accused No.5 was arrested on the basis of secret information, or he was known to the police officer who arrested him. There is no evidence to connect the accused No.6 with alleged larger conspiracy. The only evidence against the accused No.6 is of PW-4 Vilas Nage, the panch witness on recovery of counterfeit currency from the possession of accused No.6. He, however, has admitted that when he arrived at

the spot the accused No.6 was already in the custody of police. He did not ask any questions to accused No.6. He was not informed that it was a case of counterfeit currency notes. The Trial Court was thus not justified in convicting the accused No.6 on the basis of such deficient evidence.

31. The learned counsel for the Appellants submits that the Trial Court erred in convicting the accused Nos.1 to 6 for the offences punishable under Sections 16 and 18 of the UP (A) Act. The learned counsel for the Appellants submits that the alleged incident in question took place on 14 May 2009. It is submitted that as on the said date act of production or smuggling or circulation of high quality counterfeit Indian paper currency with intent to cause damage to the monetary stability of India was not '*terrorist act*' as defined under Section 15 of the UP (A) Act. It is submitted that the clause to that effect making the said act as '*terrorist act*' came to be inserted by the Unlawful Activities (Prevention) Amendment Act, 2012 with effect from 1 February 2013. It is submitted that the Trial Court was thus not justified in convicting the accused Nos.1 to 6 for the offences punishable under Sections 16 and 18 of the UP (A) Act. In support of submissions, the learned counsel for the Appellants has relied upon the decision of full bench of the Kerala High Court in *Abdul Salam vs. National Investigating Agency Kochi*³.

3 2018 SCC Online Ker 1724

32. On the other hand, the learned counsel for the Respondent-NIA submits that the Trial Court was justified in convicting the accused Nos.1 to 6 for the offences punishable under Sections 16 and 18 of the UP (A) Act. It is submitted that even prior to amendment to Section 15, the act of smuggling or circulation of counterfeit Indian currency was terrorist act and amendment is only clarificatory in nature. It is submitted that the decision in the case of *Abdul Salam (supra)* is not correct.

33. Section 15 of the UP (A) Act, as it stood prior to amendment reads thus:

“15. Terrorist act. – Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country, –

- (a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause-*
 - (i) death of, or injuries to, any person or persons; or*
 - (ii) loss of, or damage to, or destruction of, property; or*
 - (iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or*
 - (iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or*
- (b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public*

- functionary or attempts to cause death of any public functionary; or*
- (c) *detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or any other person to do or abstain from doing any act,*
- commits a terrorist act.*

Explanation.-- For the purpose of this section, public functionary means the constitutional authorities and any other functionary notified in the Official Gazette by the Central Government as a public functionary."

34. Section 15 came to be amended by the Unlawful Activities (Prevention) Amendment Act, 2012 with effect from 1 February 2013 and amended Section 15 reads thus:

"15. Terrorist act. - (1) Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security, economic security or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country, -

- (a) *by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause—*

- (i) *death of, or injuries to, any person or persons; or*
- (ii) *loss of, or damage to, or destruction of, property; or*
- (iii) *disruption of any supplies or services essential to the life of the community in India or in any foreign country; or*
- (*iiia*) *damage to, the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material; or*
- (iv) *damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their*

agencies; or

- (b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or*
- (c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or an international or inter-governmental organisation or any other person to do or abstain from doing any act; or commits a terrorist act.*

Explanation. — For the purpose of this sub-section. —

- (a) “public functionary” means the constitutional authorities or any other functionary notified in the Official Gazette by the Central Government as public functionary;*
- (b) “high quality counterfeit Indian currency” means the counterfeit currency as may be declared after examination by an authorised or notified forensic authority that such currency imitates or compromises with the key security features as specified in the Third Schedule.*
- (2) The terrorist act includes an act which constitutes an offence within the scope of, and as defined in any of the treaties specified in the Second Schedule.”*

(emphasis supplied)

35. The term ‘economic security’ and clause (iiia) by which damage to the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency coin or of any other material is made a terrorist act, came to be incorporated in Section 15 by Unlawful Activities (Prevention) Amendment Act, 2012 with effect from 1 February 2013. The question is therefore, whether the act of production or smuggling or circulation of high quality counterfeit Indian paper currency in India was a terrorist act prior to the coming into force of the Unlawful Activities (Prevention) Amendment, Act 2012.

36. The very same question of law arose for consideration before the Kerala High Court in the case of *Abdul Salam (supra)*, wherein the accused was arrested at the Nedumbassery International Airport on 26 January 2013 by the customs officials and a huge quantity of 'high quality counterfeit Indian paper currency' was seized from his possession. The full bench of Kerala High Court has observed:

"8. Now the crucial question is whether the final report in this case under the U.A.(P) Act is acceptable, in view of the decision of this Court in Shareef's case, or whether the said decision requires reconsideration, or whether the present prosecution against the appellant and others under the U.A.(P) Act is sustainable under Sections 16 and 18 of the U.A.(P) Act, as it stood prior to 1.2.2013.

10. We do not accept the said interpretation given to the unamended provisions of Section 15 of the U.A.(P) Act by the Division Bench. The objects and reasons of the Unlawful Activities (Prevention) Amendment Act, 2012 will give us an indication as to the circumstance in which the Parliament thought of amending the law to include import or smuggling or circulation of 'high quality counterfeit Indian paper currency' within the definition of terrorist act. The Amendment Act indicates that the Parliament thought of bringing such an amendment as the existing provisions of the U.A(P) Act did not include within their scope such acts, and within the existing provisions of the U.A.(P) Act, import or circulation or smuggling of such currency notes will not amount to an act of terrorism threatening or likely to threaten the economic security of India. When the learned counsel for the appellant Sri.Vipin Narayan pointed out the objects and reasons of the Amendment Act, the learned standing counsel for the NIA submitted that on the basis of the objects and reasons alone, a provision cannot be interpreted. It is an accepted principle of interpretation of statutes that in interpreting a provision of law, the court will not travel beyond the meaning of the provision and the legislative purpose behind the provision. By making a stretchy and unrealistic interpretation, the court, in the process of interpretation, cannot undo or defeat what the legislature meant to achieve, or introduce what the legislature meant to undo by bringing such a provision in the statute. We are now on an interpretation of a provision

of penal law. It is settled that while interpreting the provisions of penal laws, or the provisions making certain acts unlawful or illegal with penal consequences, the interpreting court ought not to do violence to the language of the Section or offend the clear meaning of the provision by which the legislature intended to achieve an object. It is well settled that penal statute shall be construed strictly and the court must take care to see, while interpreting penal provisions, that the things alleged against an accused as an offence comes squarely within the plain meaning of the words used by the legislature, and the court shall not import anything alien or extraneous in such a way as to defeat the provisions containing the legislative intent. In Commissioner of Agricultural Income Tax, Kerala v. Plantation corporation of Kerala Ltd, Kottayam [(2001) 1 SCC 207], the Hon'ble Supreme Court reiterated the broadly accepted principle of interpretation that when there is no ambiguity in the statutory language resort to any interpretative process to unfold the legislative intent becomes impermissible, and the need for interpretation arises only when the words of the statute are on their own terms ambivalent and do not manifest the intention of the legislature.

... ..

17. *Our concern is not what the present provision is, but what the provision was, or how the provision stood before the amendment, because the offence alleged in this case was committed before the amended provisions came into force. Prior to the amendment, any act done with intent to threaten or likely to threaten the unity, integrity, security or sovereignty of India, or done with the object of striking terror in the mind of the people or any section of the people, by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or other substances of a hazardous nature or by any other means of whatever nature would amount to a terrorist act, if such an act caused the death of or injuries to any person or persons, or caused loss of, or damage to, or destruction of property, or disruption of any supplies or services essential to the life of the community in India in or in any foreign country, or caused damage or destruction of any property in India or in a foreign country, used or intended to be used for the defence of India or in connection with any other purposes of the Government of India or of any State Government or any of their agencies etc. Thus, to constitute a terrorist act, as defined under the unamended Section 15 of the U.A (P) Act, the act done by the accused must be something done to threaten the unity, integrity, security or sovereignty of India, and such things can be*

achieved, or such acts can be done by using any bomb or dynamite or other explosive substances or inflammable substances or firearms or substances of hazardous nature or by any other means of whatever nature. Our stress is on clause (ii) of Section 15 (a). In Shareef's case, the Division Bench interpreted that any act causing loss of, or damage to property, done with the object of damaging or threatening the economic security of India will amount to a terrorist act under the un-amended Section 15 of the U.A (P) Act. The interpretation of the Division Bench in Shareef's case is that economic security of the country is also covered by the term security used in the first part of the un-amended Section 15, and the Division Bench also further interpreted that import or smuggling or circulation of counterfeit Indian paper currency will amount to an act causing damage to property, and that the finance of the country is included in the definition of property.

19. No doubt, the property meant and defined under Section 2 (h) of the U.A (P) Act must be something having some value in ordinary transactions, whether it is tangible or intangible, or movable or immovable or corporeal or incorporeal. Valueless objects cannot be covered by the term property. The interpretation of the Division Bench in Shareef's case is that the finance of the country is included in the definition of property. Finance is a broad term covering so many aspects of monetary set up, and it is not something that can be simply called property. To be property as meant under the law, the object must satisfy the definition of property under Section 2(h) of the U.A (P) Act. The Division Bench has gone too far with an imaginative interpretation to find that the definition of property under Section 2(h) of the U.A (P) Act will cover the finance of the country also. Finance of the country is something different, having broader connotations and applications in the country's economic set up, and it cannot be brought down to a narrow concept or object as property. So also, the term 'security' occurring in Section 15 of the U.A (P) Act cannot be stretched by interpretative process to include economic security. To understand what exactly security is, as meant by the law, the whole section must be read and appreciated carefully. It is quite clear from such interpretation and understanding that the term security meant under the law is the country's security vis-a-vis., law and order situations and internal or external affairs of the country, and not financial or economic fabric. When the parliament in its wisdom realised that economic security of the country also must be brought within the definition of terrorist act, the Parliament inserted the words 'economic security' specifically in

Section 15 of the U.A (P) Act by a specific amendment. Though generally the objects and reasons of a statute cannot be given much weight or value or importance in the process of interpretation, the objects and reasons of the Unlawful Activities (Prevention) Amendment Act, 2012 will clearly indicate that the Parliament inserted words to cover economic security in Section 15 of the U.A (P) Act because the existing provision did not cover such situations or instances of acts like smuggling or circulation of high quality counterfeit Indian paper currency causing damage to the finance of the country and economic stability of the country. We find that the Parliament in its wisdom inserted the words 'economic security' in Section 15 of the U.A.(P) Act, and also introduced clause (iiia) in Section 15 regarding production or smuggling or circulation of 'high quality counterfeit Indian paper currency', making it an act of terrorism within the meaning of Section 15, only because the existing provision did not take care of such situations and acts, and a provision was felt absolutely necessary by the Parliament to punish production or smuggling or circulation of high quality counterfeit Indian paper currency as a terrorist act damaging or destroying the monetary stability of India and the economic security of India. We, thus come to the conclusion and finding that production or smuggling or circulation of high quality counterfeit Indian paper currency was not punishable till 1.2.2013 under Section 16 of the U.A (P) Act as a terrorist act defined under Section 15 of the U.A. (P) Act. We also find that the question of law was not properly considered and decided in Shareef's case.

... ..

21. In the process of interpretation on the question of law raised before us, and referred to us, we have anxiously considered the rationale of the decision of the Division Bench in Shareef's case, the impact and implications of Article 20(1) of the Constitution of India, the circumstance in which, and also the object for which, Section 15 of the U.A. (P) Act was amended by the Parliament by the Amendment Act of 2012, and also the nature and extent of the term terrorist act meant under Section 15 of the U.A(P) Act, prior to the amendment and also after the amendment. On an interpretation of the law as it stood prior to the amendment, we find that the amended provisions of Section 15 of the U.A (P) Act cannot be applied to deal with and punish import or circulation or smuggling of 'high quality counterfeit Indian paper currency' prior to 1.2.2013.

22. We accordingly answer the reference and decide the issues as follows:

(i) Production or smuggling or circulation of high quality counterfeit Indian paper currency in India prior to the amendment of Section 15 of the Unlawful Activities (Prevention) Act, by Act No.3 of 2013 is not punishable as a terrorist act under Section 16 of the U.A(P) Act, and that conspiracy to commit such an act is not punishable under Section 18 of the U.A(P) Act.
(ii) The judgment in Shareef v. State (2013 (4) KLT 60) is overruled.”

... ..
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37. We agree with the interpretation by the Kerala High Court of Section 15 as it stood prior to the amendment as in our view any other interpretation would lead to anamolous situation, i.e., prior to amendment to Section 15 by Unlawful Activities (Prevention) Amendment Act, 2012, the act of production or circulation of counterfeit Indian paper currency of high quality or otherwise would be a terrorist act, whereas as per amended Section 15, production or circulation of only high quality counterfeit Indian paper currency would be a terrorist act.

38. The Trial Court was therefore, not justified in convicting the accused Nos.1 to 6 for the offences punishable under Sections 16 and 18 of the UA(P) Act.

39. It is submitted that accused Nos.1 to 5 are in jail for more than 12 years and thus leniency be shown to them and their sentence be reduced to period of imprisonment undergone by them till date. However, considering the recovery of huge amount of counterfeit

currency from their possession, we are not inclined to reduce the sentence of accused Nos.1 to 5. In the result, the following order is passed.

ORDER

- a] All Criminal Appeals are partly allowed.
- b] The impugned judgment and order dated 30 January 2014 passed by the Special Court in Sessions Case No. 674 of 2009 convicting the accused Nos.1 to 5 for the offences punishable under Sections 489-B, 489-C and 489-E of the IPC is upheld.
- c] The impugned judgment and order dated 30 January 2014 passed by the Special Court in Sessions Case No. 674 of 2009 convicting the accused Nos.1 to 5 for the offences punishable under Sections 16 (1)(b) and 18 of the UA (P) Act is set aside and they are acquitted of the said offence.
- d] The impugned judgment and order dated 30 January 2014 passed by the Special Court in Sessions Case No. 674 of 2009 convicting the accused No.6 for the offences punishable under Sections 489-B, 489-C and 489-E of the IPC and Sections 16 (1)(b) and 18 of the UA (P) Act is set aside and he

is acquitted of the said offences.

e] The accused No.6 is in jail, he be released forthwith, if not required in any other case.

f] All the Appeals are disposed of in the above terms.

g] All the pending Criminal Applications and Interim Application do not survive and the same are disposed of.

(N. R. BORKAR, J.)

(PRASANNA B. VARALE, J.)