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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 671 OF 2002**

State through)
Superintendent of Police,)
Central Bureau of Investigation,)
Kitab Mahal, Dr. D.N. Road,)
Mumbai – 400 001)Appellant.

V/s

1] Shri Safi Mohammed,)
S/o. Sukurulla,) As per Court's order
1/9 Dubey Ansari Chawl,) dt. 19.8.2017, this
appeal)
Andheri Kurla Road,) stands abated as against
Marol, Mumbai -400054) Respondent No.1.
)
2] Shri P.K. Shashidharan,)
S/o Krishnan)
Punnavila House,)
P.O. Kottayam, Dist Quilon,)
Kerala.)
)
3] Shri Chandra Shekhar Ranga,)
Room No.T.G. 22, 1/3 Salpadevi)
Pada, P.K. Marg, Mulund (W),) Respondents
Mumbai – 400 080) (Original Accused)

Mr. Hiten S. Venegaonkar @ Harsh Dedhia for the Appellant.
Mrs. M.M. Deshmukh, APP for the State.
None for the Respondents.

**CORAM : NITIN W. SAMBRE &
R. N. LADDHA, JJ.**

DATE : MARCH 01, 2023

JUDGMENT: (*Per Nitin W. Sambre, J.*)

1] Before the Special Judge, CBI Court, Greater Mumbai in Sessions Case No.1196 of 1993, Respondents-Accused came to be acquitted for an offence punishable under Section 120B, 489B and 489C of the Indian Penal Code vide judgment and order dated 21/12/2000. As such, this Appeal under Section 378 of the Criminal Procedure Code.

2] Respondent No.1 was Accused No.1, Respondent No.2 was Accused No.3 and Respondent No.3 was Accused No.4 to the crime in question. Appeal against Respondent No.1 was abated pursuant to the order dated 29/08/2017 and no steps are taken by the Appellant for setting aside the order of abatement.

3] The case of the prosecution is, on 20/08/1993, the Appellant received secret information that accused persons were indulging in crime. Accordingly, in presence of Pancha P.W.1 - Anil, Appellant raided the Lodge located at Al-Amin

Society, Grant Road in Room No.7. Raiding Party noticed that Accused Nos.1 and 2 were in possession of US Dollars and Saudi Riyals, source of which or custody was not explained by the said accused persons.

4] Accordingly, P.W. 2 - PI Satyapal in presence of Panchas carried out personal search of both the accused persons and recovered foreign currency at Article-1 collectively alongwith passports. Panchanama accordingly was drawn at Exhibit-12. P.W. 2 - PI Satyapal has drawn a separate seizure memo and seized Guest Register which contains details about accused No.2 who has absconded. Based on above, FIR-Exhibit-17 came to be lodged by P.W.1.

5] Special Crime Branch CBI, Mumbai, thereafter took over investigation. Dy. S.P. Dnyauba - P.W.5 carried out further investigation who has drawn FIR-Exhibit-23 on 24/8/1993. Statements of Mahabal-P.W.3, Satishkumar and other witnesses were recorded. P.W.3-Mahabal thereafter gave statement under Section 164 of the Criminal Procedure Code

before the learned Magistrate which is produced at Exhibit-18 collectively. During investigation, P.W. 5 Investigating Officer claimed to have confirmed from US and Saudi Authorities that seized currency was counterfeit one and report to that effect was obtained from Central Forensic Science Laboratory which was produced at Exhibit-13 collectively. During investigation, names of two suspects viz. Mohanan and Kamal Kishore propped up. In spite of various attempts to trace these accused, the Appellant was unable to charge-sheet accused No.2. Having regard to nexus between accused No.1, absconding accused No.2 and other associates viz. accused Nos. 3 to 6, as were provided by P.W. 3 – Mahabal and P.W. 4 – K.K. Venugopal, Respondents-accused were charge-sheeted. Appellant claimed that accused No.1, accused No.3 and accused No.4 while acting hand in glove with each other, which was witnessed by P.W. 3 – Mahabal, said witness has stated that having witnessed handing over of currency notes which were US Dollars and Saudi Riyals of various denominations in exchange of Indian currency. P.W. 4 – K.K. Venugopal has disclosed that accused No.6 was friendly with

one Mohanan and Satishkumar. It is further claimed that P.W. 4 has witnessed dealing of exchange of foreign currency between Mohanan and accused No.6 at number of times in 1993. It is the case of the prosecution that P.W. 4 K.K. Venugopal gathered that Saudi Riyals in which accused No.6 alongwith Mohanan was dealing were counterfeit and accused persons who aligned with each other have conspired to commit the offence. After the aforesaid evidence which according to the prosecution disclosed cognizable offence, Respondents-accused were charge-sheeted who pleaded not guilty before the Trial Court. Since accused No.2 was absconded, his file was shown as dormant and trials were separated. Pursuant to defense, statements of accused were recorded under Section 313 of Criminal Procedure Code at Exhibits-25 to 29. Upon appreciation of evidence of P.W.1 i.e. Anil a Panch witness, P.W. 2 Satyapal, first Investigating Officer, P.W. 3 - Mahabal, P.W. 4 - K.K. Venugopal, P.W. 5 Dnyauba, the second Investigating Officer, accused were acquitted.

6] While questioning the acquittal recorded by the Special Judge, CBI Court vide judgment dated 21/12/2000, Mr. Venegaokar, learned Counsel appearing for the Appellant would urge that Special Court has committed an error in discarding evidence of P.W. 3 - Mahabal and P.W. 4 - K.K. Venugopal. They have specifically stated about conspiracy and having witnessed the exchange of currency. He would further urge that Special Judge in a cryptic order has recorded acquittal without appreciating entire evidence on record.

7] None appeared for Respondents.

8] The case of the prosecution is based on alleged nexus or connection between accused and untraced suspects viz Mohanan and Kamal Kishore. It appears that the Appellant was unable to trace the said accused persons so as to exactly ascertain role of accused No.1 and accused No.2.

9] It is claimed that accused No.2 was associate of accused

No.1 who was found in possession of counterfeit currency which is Article-1 collectively. As far as role of accused No.2 is concerned, it is the case of prosecution that he has absconded from very spot and as such, prosecution is unable to prove nexus between accused Nos. 1 and 2.

10] If a person is found in possession of counterfeit currency that by itself is not an offence under the provisions of Section 489B and 489C under which accused persons were charged but the use of such fake currency with dishonest intention knowing fully that such currency is counterfeit currency constitute an offence. Prosecution through its witnesses P.W. 3 - Mahabal and P.W. 4 - K.K. Venugopal is unable to establish such act on the part of accused persons. Testimony of P.W. 3 and 4 only speaks of exchange of foreign currency with Indian currency. However, use of such foreign currency by the accused persons is not at all established. Testimony of P.W. 4 - K.K. Venugopal was found to be unreliable by the Court below as he was on inimical terms with accused No.6. Apart from above, prosecution has failed to discharge its initial

burden on the issue of conspiracy, as no material to that effect is brought on record.

11] In the aforesaid backdrop, acquittal of the accused by the Court below is based on proper appreciation of evidence and failure of the Appellant to discharge its initial burden having regard to principle of presumption as provided for offence punishable under Section 489B and 489C of the Indian Penal Code. As such, view expressed by the Special Court is a possible view. Appeal is against acquittal which has remained pending for more than 20 years and prosecution is of the year 1993 i.e. this Appeal is heard after a period of 30 years.

12] In this backdrop, this Court is of the view that no case for upsetting the view of the Trial Court is made out. Appeal as such fails and same stands dismissed.

[R. N. LADDHA, J.]

[NITIN W. SAMBRE, J.]