2024:KER:75158

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

WEDNESDAY, THE 9TH DAY OF OCTOBER 2024 / 17TH ASWINA, 1946

CRL.REV.PET NO. 150 OF 2018

AGAINST THE JUDGMENT DATED 28.11.2017 IN CRL.A NO.497 OF 2009 OF ADDITIONAL SESSIONS COURT II, THALASSERY ARISING OUT OF THE JUDGMENT DATED 29.10.2009 IN SC NO.1519 OF 2005 OF ADDITIONAL ASSISTANT SESSIONS COURT, THALASSERY

REVISION PETITIONERS/APPELLANTS/ACCUSED NOS.1 AND 2:

1 B. ABOOBACKER
S/O.IBRAHIM, VADAKKEKARA HOUSE, BABINCHA, THEKKEFERY P.O., KASARGODE.

2 P.SATHYAN
S/O.UTHARAN, ELATHOOR AMSOM DESOM, ELATHOOR P.O., KOZHIKODE DISTRICT.

BY ADV SRI.P.P.RAMACHANDRAN

RESPONDENT/RESPONDENT/DEFACTO COMPLAINANT:

STATE OF KERALA
(SHO, KOOTHUPARAMBA POLICE STATION), REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY SRI.T.R.RENJITH-SR.PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR HEARING ON 21.8.2024, THE COURT ON 9.10.2024 DELIVERED THE FOLLOWING:

2024:KER:75158

CR

M.B.SNEHALATHA, J

Crl.R.P.No.150 of 2018

Dated this the 9th October 2024

O R D E R

Revision Petitioners are accused Nos.1 and 2 in S.C.No.1519/2005 on the file of Sessions Court, Thalassery. In this revision, they assail the judgment in Crl.A No.497/2009, which confirmed the judgment of conviction and order of sentence against them in S.C.No.1519/2005 for the offence punishable under Section 489-C of Indian Penal Code (for short 'IPC').

2. In brief, the prosecution case is that on 26.4.2001, A1 and A2, who were occupying room No.2 of 'Salkkara Lodge', Kuthuparamba, were found in possession of 256 number of counterfeit currency notes of ₹1000/- denomination. A1 and A2 were keeping the said counterfeit notes, knowing the same to be

counterfeit and it was kept for the purpose of distributing the same as genuine currency notes. Further, it was alleged that it was A3 who entrusted the counterfeit currency notes to A1 and A2 for distribution.

3. After investigation, the CBCID filed final report against A1 to A3 for the offences punishable under Section 489-B and 489-C and Section 120-B read with Section 34 IPC. After committal, the Sessions Court made over the case to Assistant Sessions Court, Thalassery for trial and disposal.

4. Before the trial court, prosecution examined PWs 1 to 9 and marked Exts.P1 to P14. MO1 series to MO3 series notes and MO4 are the material objects. Exts.D1, D1(a) were marked on the side of the accused.

5. After trial, on an appreciation of the evidence, the trial court found A1 and A2 guilty of the offence punishable under Section 489-C IPC and they were convicted and sentenced thereunder. A1 and A2 were sentenced to undergo rigorous imprisonment for five years each and also sentenced to pay a fine of ₹50,000/- each for the offence under Section 489-C of

IPC. In default of payment of fine, A1 and A2 were directed to undergo rigorous imprisonment for one year each. A1 and A2 were found not guilty of the offences punishable under Sections 489-B and 120-B of IPC and they were acquitted of the said offences. A3 was found not guilty of the offences punishable under Sections 120-B, 489-B and 489-C of IPC and he was acquitted.

6. The finding of conviction and order of sentence against A1 and A2 by the trial court was confirmed in Crl.A No.497/2009 by the learned Sessions Court, Thalassery.

7. In the instant criminal revision petition, A1 and A2 assail the said concurrent finding of conviction and sentence against them on the ground that the trial court and the appellate court failed to appreciate the evidence in its correct perspective. It was contended by the learned counsel for the accused that the prosecution failed to prove the seizure of counterfeit currency notes from A1 and A2. Further, it was contended that the case was originally investigated by PW9 who had no jurisdiction to investigate the case which is fatal to the prosecution case.

8. Yet another contention urged by the learned counsel for the accused was that the counterfeit currency notes allegedly seized were not sealed by the detecting officer from the place of the incident and therefore tampering cannot be ruled out.

9. Per contra, the learned Public Prosecutor contended that the prosecution has succeeded in establishing that 256 counterfeit currency notes of ₹1000 denomination were seized from A1 and A2 who were occupying room No.2 of Salkkara Lodge, Kuthuparamba on 26.4.2001 and the accused kept large number of counterfeit notes in their possession knowing the same to be counterfeit currency notes and they were keeping it for the distribution and therefore there is no reason at all to interfere with the conviction and sentence against A1 and A2. The learned Public Prosecutor supported the findings of conviction and sentence and argued that the prosecution has succeeded in establishing the offence under Section 489-C IPC against A1 and A2 and therefore revision petition is liable to be dismissed.

10. In view of the rival contentions, let us see whether

there are any grounds to interfere with the conviction and sentence against A1 and A2.

11. PW1 is the detecting officer. He was the then Circle Inspector of Police, Kuthuparamba. According to him, acting on a tip-off, on 26.4.2001 at around 1 pm. he, along with his team of police officers reached at Salkkara Lodge, Kuthuparamba. When they reached there, room No.2 of the said lodge was seen locked from inside. Accordingly, PW1 prepared Ext.P1 search memo to conduct search of the said room and forwarded it to the jurisdictional Magistrate Court and conducted search of the said room. A1 and A2 were seen occupying the room. Upon search of the body of A1, in the presence of witnesses, two bundles of counterfeit notes of ₹1000/- denomination concealed inside the baniyan worn by him were seized of which one bundle consisted 86 notes and the other bundle consisted 85 notes. Upon conducting body search of A2, one bundle consisting of 85 counterfeit notes of ₹1000/- denomination wrapped in a newspaper were seen concealed underneath the shirt worn by him. PW1 seized 256 counterfeit notes of ₹1000/- denomination

from A1 and A2 as per Ext.P6 search list in the presence of witnesses and he arrested A1 and A2 from the spot. Ext.P2 to P5 are the arrest memos and inspection memos. MOs 1 series to MO3 series are the bundles of counterfeit notes seized from A1 and A2. Ext.P7 is the FIR registered by PW1.

12. The version given by PW1 receives corroboration from the version of PW2, who was an attender of Salkkara Lodge, Kuthuparamba. In his evidence PW2 has testified that on the alleged date of the incident, the police party arrived at the lodge and seized the counterfeit currency notes from the two occupants in room No.2. PW2 has also testified that he was a witness to Ext.P6 search list and Exts.P2, P4 arrest memos. Though PW2 has stated that due to lapse of time, he cannot identify the persons who were arrested on the said date, he has categorically testified that the search was conducted in room No.2 of the said lodge and the counterfeit currency notes were seized by the police from the two occupants of the said room. It is to be borne in mind that PW2 was examined before the court after eight years of the incident. Therefore, his inability to identify the

accused during trial is not a ground to discard his evidence. In *State of Punjab v. Wassan Singh and others (AIR 1981 SC 697)* the Hon'ble Supreme Court observed as follows:

> "Where the witnesses were examined at the trial 17 months after the incident, the discrepancies in regard to the collateral or subsidiary facts occur even in the statements of truthful witness, particularly when they are examined to depose to events which happened long before their examination such a discrepancies are hardly a ground to reject the evidence of the witnesses when there is general agreement and consistency in regard to the substratum of the prosecution case."

13. The versions of PW1 and 2 receive further corroboration from the versions of PW3 and 4. PW3 who was also an attender of the said lodge has testified that on the previous day of the occurrence in this crime, he had let out room No.2 of the said lodge to two persons; that on the next day, he came to know from PW2 that the said two persons who took the room on rent were arrested by the police and the police had seized counterfeit currency notes from them. PW3 has identified A1 as the person to whom he let out room No.2. PW4 who was a witness to Ext.P8 mahazar has testified that on the date when the police conducted search and seized the currency notes from

the occupants of room No.2 of Salkkara Lodge, Kuthuparamba, he was occupying the adjacent room namely room No.1 of the said lodge.

14. PW5 who was a police constable attached to the office of the Circle Inspector of Police, Kuthuparamba in his evidence testified that he had accompanied PW1 to the Salkkara Lodge and he had participated in the search and seizure conducted by PW1. PW5 testified more or less in similar manner as that of the version of PW1. PW5 has also testified that two bundles of counterfeit currency notes of ₹1000/- denominations were seized from A1 of which one bundle contained 85 notes and other bundle contained 86 notes. He has also testified that upon search of the body of A2 one bundle containing 85 counterfeit currency notes of ₹1000/- denominations were seized from A2. He has also testified regarding the preparation of Ext.P1 search memo and P6 search list and the spot arrest of A1 and A2 from the said lodge by PW1.

15. PW9 was the then Circle Inspector of Police, Panoor who conducted the initial investigation and seized the register of

the said lodge as per Ext.P13 seizure mahazar. Subsequently, the investigation was taken over by the Crime Branch Unit, Kozhikode and PWs 6 to 8 conducted investigation. PW8 who was the then Crime Branch Detective Inspector, Kozhikode Unit took steps to send MO1 to MO3 series of notes for examination to the Bank Note Press through the court. The versions of PWs1 to 5 regarding the seizure of counterfeit currency notes from A1 and A2 who were occupying room No.2 of Salkkara Lodge is consistent and their evidence mutually corroborate each other. There are no materials to hold that PWs 1 to 5 in any way motivated to falsely implicate the accused in a grave crime of this nature.

16. Ext.P6 search list would reveal that search was conducted on 26.4.2001 between 13.10 hrs. to 14.10 hrs. Ext.P6 search list and Ext.P7 FIR seen to have reached before the jurisdictional Magistrate Court 27.4.2001 at 10.30 am. Thus, there is no delay in producing Ext.P6 search list and Ext.P7 FIR before the court which adds credibility to the prosecution case regarding the search and the seizure of counterfeit currency

notes from the possession of A1 and A2.

17. The versions of PWs 1 and 5 coupled with the version of PWs 2 to 4 would show that acting on a tip-off on 26.4.2001 at around 1 pm, the police party led by PW1 reached at Salkkara Lodge, Kuthuparamba and seized 256 counterfeit currency notes of ₹1000/- denominations from A1 and A2 who were staying in room No.2 of the said lodge.

18. The evidence on record would show that the counterfeit currency notes seized from A1 and A2 were sent to Bank Note Press, through court. Ext.P10 is the report received from the Bank Note Press. In Ext.P10 report, it has been specifically opined that the 256 notes sent for expert opinion were counterfeit currency notes of ₹1000/- denomination.

19. The learned counsel for the accused contended that after the alleged seizure of the counterfeit currency notes from the accused, the same were not sealed by the detecting officer at the spot and therefore, tampering cannot be ruled out.

20. It is to be noted that in Ext.P6 search list, which is a contemporaneous document, the detecting officer has specifically

noted down the serial number of the currency notes seized from the accused. It has been specifically shown in Ext.P6 search list that 86 counterfeit currency notes of ₹1000/- denomination having Serial No.2AC933850, 85 counterfeit currency notes of ₹1000/- denomination having Serial No.2AC933847 and 85 currency notes having Serial No.2AC933849 were seized. Therefore, the fact that the counterfeit notes seized were not sealed by the detecting officer has not caused any prejudice to the accused and it would not in any way weaken the prosecution case nor it affects the credibility of the prosecution case.

21. Ext.P10 expert opinion received from the Government of India Bank Note Press, Deewas, Madhya Pradesh would reveal that the notes seized from A1 and A2 which were sent for expert opinion were counterfeit notes of ₹1,000/- denomination. Thus, prosecution case that A1 and A2 were found in possession of 256 number counterfeit currency notes of ₹1,000/- denomination stands established by the prosecution as rightly held by the learned Assistant Sessions Judge and the learned Additional Sessions Judge.

22. Yet another contention put forwarded by the learned counsel for the accused was that, PW9 who was the Circle Inspector of Panoor conducted part of the investigation was not competent to investigate into offence, as the area wherein the crime was allegedly committed was beyond his jurisdiction.

23. Admittedly, part of the investigation was carried out by PW9. PW9 has categorically testified that he conducted part of the investigation as per the orders of his superior officer. It has come out in evidence that the investigation was subsequently handed over to CBCID. The mere fact that part of the investigation was conducted by PW9 as per the direction of the superior police officer do not in any way affect the credibility of the prosecution case. It has come out in evidence that a fairly large number of counterfeit notes namely 256 notes of ₹1000/- denomination were seized from the possession of A1 and A2. Though the prosecution witnesses were cross examined at length regarding the search and seizure, defense could not make any dent in their version. There is no contradiction worthy enough to dislodge the credibility of the testimonies of the prosecution

witnesses. The search and seizure of counterfeit notes from the possession of A1 and A2 were amply proved the cogent and satisfactory evidence. It is well settled that credibility of a witness has to be tested on the touchstone of truthfulness and trustworthiness.

24. PW1, the detecting officer has given a clear narration through his deposition pertaining seizure of counterfeit notes from the possession of A1 and A2.

25. The presumption that every person acts honestly applies as much in favour of a police official as any other person. In *Tahir v. State (Delhi) [(1996) 3 SCC 338]*, the Apex Court held as follows:

> "In our opinion no infirmity attaches to the testimony of police officials, merely because they belong to the police force and there is no rule of law or evidence which lays down that conviction cannot be recorded on the evidence of the police officials, if found reliable, unless corroborated by some independent evidence. The Rule of Prudence, however, only requires a more careful scrutiny of the evidence, since they can be said to be interested in the result of the case projected by them. Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can from basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence does not in any way affect the creditworthiness of the prosecution case."

26. In *Girja Prasad v. State of M.P [(2007) 7 SCC 625]*,

the Hon'ble Apex Court held that the presumption that every person acts honestly applies as much in favour of a Police Official as any other person. No infirmity attaches to the testimony of Police Officials merely because they belong to Police Force. There is no rule of law which lays down that no conviction can be recorded on the testimony of Police Officials even if such evidence is otherwise reliable and trustworthy. The rule of prudence may require more careful scrutiny of their evidence. But, if the Court is convinced that what was stated by a witness has a ring of truth, conviction can be based on such evidence.

27. The accused have no case that PW1 was nurturing any grudge or vendetta against them so as to implicate them falsely in a crime of this nature.

28. The evidence of the prosecution witnesses are trustworthy and they corroborate each other in material particulars regarding the seizure of the counterfeit notes from the accused who were occupying room N.2 of Salkkara Lodge, Koothuparambu. There is adequate corroboration of the evidence of material witnesses. The seizure of fake currency notes from

the possession of A1 and A2 stands proved by the prosecution. As already mentioned above, Ext.P10 report of the expert received from the Bank Note Press shows that the currency notes seized from A1 and A2 were not genuine Indian currency notes, rather the same were counterfeit currency notes.

29. Section 489-C IPC reads as under:

> **"489-C. 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.

30. Accused have no case at all that they were in possession of the counterfeit currency notes without having any knowledge that the same are counterfeit notes. They also have no case that they innocently came into the possession of the said counterfeit currency notes. A1 and A2 did not offer any explanation when questioned under Section 313(1)(b) Cr.P.C regarding their possession of counterfeit currency notes. Apart from saying that they were falsely implicated, they have no explanation at all how they came into possession of large

quantity of counterfeit currency notes seized from them. Section 106 of the Indian Evidence Act enjoins that when any fact is especially within the knowledge of any person, the burden of proving the fact is upon him.

31. If facts within the special knowledge of the accused are not satisfactorily explained, that could be a factor against the accused. Though such factor by itself is not conclusive of guilt, it becomes relevant while considering the totality of the circumstances. A1 and A2 have no case that they did not know that the notes possessed by them were fake. Accused have absolutely no explanation at all as to how they came into possession of large quantity of counterfeit currency notes and it necessarily give rise to an inference that they possessed it with the intention or knowledge as contemplated under Section 489C IPC and they had requisite mens rea for possession of counterfeit currency notes. Accused have no case that they were unwary possession of fake currency notes.

32. Mens rea or the intention of the accused can be inferred from the circumstances and conduct of the accused and

if the accused is not able to give any satisfactory explanation for coming into possession of counterfeit currency notes, it necessarily give rise to an interference that they had the intention or knowledge as contemplated under Section 489-C IPC. The prosecution has succeeded in establishing offence punishable under Section 489-C IPC against A1 and A2 beyond any reasonable doubt as rightly found by the trial court and the Sessions Court. Hence, I find no reason to interfere with the judgment of conviction for the offence under Section 489-C IPC.

33. The trial court has sentenced A1 and A2 to undergo rigorous imprisonment for five years each and to pay a fine of ₹50,000/- each in default of payment of fine to undergo rigorous imprisonment for one year each. Sentence awarded by the trial court was confirmed in appeal. Now, the question is whether the sentence against A1 and A2 needs any interference.

34. Large quantity of counterfeit currency notes were seized from the accused. It is a well settled principle that punishment should be commensurate with the gravity of the offence committed. The counterfeiting of currency notes is a

grave offence which destabilises and undermines the economy and it poses threat to the security of the nation. Considering the gravity of offence, the sentence awarded is not harsh or excessive. Therefore, I find no reason to interfere with the sentence.

In the result, the Crl.Revision Petition is dismissed.

Sd/-

M.B.SEHALATHA
JUDGE

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