



"C.R."

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

TUESDAY, THE 19TH DAY OF MARCH 2024 / 29TH PHALGUNA, 1945

CRL.APPEAL NO. 845 OF 2020

AGAINST THE JUDGMENT DATED 19.10.2020 IN SC NO.1948 OF
2014 OF SPECIAL COURT (SPE/CBI), THIRUVANANTHAPURAM
APPELLANTS/ACCUSED 1 TO 4:

- 1 MD. KAMIRUL ISLAM
AGED 41 YEARS
S/O MD.ASAMUDDIN, VILLAGE SONAKOL, POST BAGWA
AND MILANGARH, POLICE STATION,
HARISHCHANDRAPUR, MALDA DISTRICT, WEST BENGAL.
- 2 ANAMUL HOQUE,
AGED 27 YEARS
S/O ABDUL LATIF, VILLAGE RANGAIPUR, POST
B.DAOULATPUR, POLICE STATION, HARISHCHANDRAPUR,
MALDA DISTRICT, WEST BENGAL.
- 3 SIRAJUL HOQUE,
AGED 30 YEARS
S/O ABDUL HALIM, VILLAGE AND POST DHANGARA,
POLICE STATION CHANCHAL, MALDA DISTRICT, WEST
BENGAL.
- 4 RAHUL AAMIN,
AGED 30 YEARS
S/O JOHOR ALI (LATE VILLAGE RANGAIPUR,
FANDIPADA POST B DAOULATPUR, POLICE STATION
HARISCHANDRAPUR, DIST.MALDA, WEST BENGAL.

BY ADVS.

T.U.SUJITH KUMAR

V.J.JAYAKUMAR ABRAHAM

R.SUNIL KUMAR

R.GOPAN



Crl.Appeal No.845 of 2020

RESPONDENT/COMPLAINANT :

CENTRAL BUREAU OF INVESTIGATION
EOU-VI-NEW DELHI-110 003.

BY ADVS.

DR.K.P.SATHEESAN, SPL.P.P. FOR C.B.I.

SRI.GOKUL D.SUDHAKARAN

SRI.BHARAT MOHAN

OTHER PRESENT :

SMT.SEENA C. , PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING COME UP FOR FINAL
HEARING ON 04.03.2024, THE COURT ON 19.03.2024 DELIVERED
THE FOLLOWING:

**P.G. AJITHKUMAR, J.****“C.R.”**

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Dated this the 19th day of March, 2024**JUDGMENT**

The appellants are the accused in S.C.No.1948 of 2014 before the Special Court (SPE/CBI), Thiruvananthapuram. They were convicted for the offence punishable under Section 120B r/w Sections 489B and 489C of the Indian Penal Code, 1860. Assailing the said judgment, they have filed this appeal under Section 374(2) of the Code of Criminal Procedure, 1973 (Code).

2. The prosecution was initiated with the following allegations:

At about 10.00 a.m. on 22.10.2011 the 1st appellant was found in possession of counterfeit currency notes. Appellant Nos.2 to 4 were the companions of the 1st appellant. They also were found in possession of counterfeit currency notes. A child was along with the 1st appellant and three children were with the 4th appellant. They were also found in possession of



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counterfeit currency notes. Following are the details of the counterfeit currency notes possessed by each of the said persons:

Sl. No.	Description	No.of Rs.1000 notes possessed	No.of Rs.500 notes possessed
1	Appellant No.1	19	5
2	Appellant No.2	26	Nil
3	Appellant No.3	6	Nil
4	Appellant No.4	Nil	7
5	Child with appellant No.1	13	5
6	Child with Appellant No.4	Nil	26
7	Child with Appellant No.4	Nil	17
8	Child with Appellant No.4	Nil	12

3. On the basis of the conspiracy hatched by them for trafficking in counterfeit currency notes, they possessed the currency notes. Further, from the room in Sreedevi Lodge which was in occupation of the 2nd and 3rd appellants 75 numbers of 1000 rupee denomination counterfeit notes were recovered. From room No.2A in Kailas Lodge, which was in occupation of the 4th appellant and the children along with him, 96 numbers of 500 rupee denomination of counterfeit currency notes were recovered. Thus, the appellants and the children together possessed 139 numbers of 1000 rupee



denomination and 168 numbers of 500 rupee denomination counterfeit currency notes.

4. The children in conflict with law were sent to the Juvenile Justice Home. The trial court framed charges against the appellants for the offences under Sections 120B, 489B and 489C of the IPC. They denied the charge. The prosecution has examined PWs.1 to 14 and proved Exts.P1 to P44. Exts.X1 to X5 were also marked. MOs.1 to 37 were identified. On the close of the prosecution evidence, the appellants were examined under Section 313(1)(b) of the Code. They denied the incriminating circumstances appeared against them in evidence. They further stated that they were innocent. On the defence side, DW1 was examined and Exts.D1 to D9 were marked. After hearing both sides, the trial court held that the prosecution proved the charge levelled against the appellants and proceeded to convict and sentence them.

5. Heard the learned counsel for the appellants and the learned Senior Counsel appearing for the respondent-CBI.



6. PW1 was the Sub Inspector of Police, Parassala Police Station during the relevant time. PW2 was a Civil Police Officer, PW3 was an Additional Sub Inspector, PW4 was a Grade Sub Inspector and PW5 was a Senior Civil Police Officer; all attached to the Parassala Police Station during the relevant period. PW1 deposed that at about 10.00 a.m. on 22.10.2011 he got a reliable information that two Hindi speaking persons were trying to transact counterfeit currency notes. He along with PWs.2 to 5 and other police personnel went to Idichakkaplammodu, where they found the 1st appellant and a child together. Finding that they were the persons who tried to transact counterfeit currency notes, their bodies were searched. From the 1st appellant, 19 numbers of 1000 rupee and 5 numbers of 500 rupee denomination counterfeit currency notes were found. The child was in possession of 13 numbers of 1000 rupee and 5 numbers of 500 rupee denomination counterfeit currency notes. They were in possession of genuine currency notes of various denominations also. They were arrested and the currency



notes and other articles with them were seized. On the basis of the information passed on by the 1st appellant that two of his companions were also in possession of similar currency notes, PW1 located appellant Nos.2 and 3. On their body search, 26 numbers of 1000 rupee denomination from the 2nd appellant and 6 numbers of 1000 rupee denomination counterfeit currency notes from the 3rd appellant were found. It is the further version of PW1 that the said appellants revealed that the 4th appellant and three others were staying in Kailas Lodge at Aristo Junction, who also were in possession of counterfeit currency notes. That resulted in locating the 4th appellant and three children along with him. From their body search, counterfeit currency notes were recovered. The 4th appellant was in possession of 7 numbers of 500 rupee denomination counterfeit currency notes. The children were also in possession of counterfeit notes of 500 denomination. Ext.P8 mahazar was prepared by PW1 in regard to the recovery of counterfeit currency notes and other articles from the possession of the appellants and the children. MOs.1 to 37 are the articles so seized.



7. It was PW3, who searched room No.10 in Sreedevi Lodge, where appellant Nos.2 and 3 were stated to have stayed. From the said room, 75 numbers of 1000 rupee denomination counterfeit currency notes were recovered. PW3 seized the same by preparing Ext.P18 search list. Similarly, PW4 searched room No.2A in Kailas Lodge, where the 4th appellant along with three children stayed. From that room, 96 counterfeit currency notes of 500 rupee denomination were recovered. PW4 prepared Ext.P23 search list for the seizure of the said currency notes.

8. The child along with the 1st appellant went to the pan shop of PW6 and tendered a 1000 rupee note after purchasing a few articles. PW6 did not have change with him and hence he went to PW14, who is conducting a hotel nearby. PW14 entertained suspicion that the said 1000 rupee currency note was fake. That resulted in PW6 intimating the matter to PW1. Then PW1 along with fellow police personnel reached at Idichakkaplammodu where PW6 was conducting his business. From the evidence of PW6 it is evident that the



1st appellant and the child, who tendered 1000 rupee currency note to PW6 were sailing together. It was in that circumstance the 1st appellant and the child along with him were intercepted and the recovery effected from both of them.

9. From the oral testimonies of PWs.1, 3, 4 and 5 recoveries of currency notes in question from the possession of respective appellants have been proved. After considering the entire evidence, the trial court concluded that evidence of the said witnesses could be believed. Of course, they are police officers. But when their narration regarding the search, seizure and arrest are convincing and devoid of any infirmities, I find no reason to unsettle the findings of the trial court regarding the seizure of currency notes from the possession of the respective appellants and the children in their company.

10. PW7 was the receptionist-cum-manager of Sreedevi Tourist Home at Aristo Junction, Thiruvananthapuram. He deposed that the police personnel inspected room No.10 in the said tourist home which appellant Nos.2 and 3 were in



occupation. PW7 has produced the register of occupants in the said tourist home for the relevant period. Ext.P26 is the said register. It was PW3, who inspected the said room and seized 75 currency notes of rupees 1000 denomination under Ext.P18 search list. Oral testimony of PW7 coupled with Ext.P26 sufficiently corroborates the version of PW3. Thus, the fact that 75 currency notes of rupees 1000 denomination were in the possession of appellant Nos.2 and 3 stands proved.

11. PW8 is a co-owner of Kailas Lodge, Aristo Junction, Thiruvananthapuram. He deposed before the court that one Sri.Subramanian was the Manager of the said lodge on 22.10.2011 and he had produced Ext.P29 register of occupants maintained in the lodge before the police. PW8 has proved before the court the register as Ext.P29. Room No.2A in the lodge was in the occupation of 4th appellant on 22.10.2011 as per the said register. PW13 was a cleaner in that lodge. He deposed that police came to the lodge and searched room No.2A where Hindi speaking persons were



staying. He also testified that currency notes were recovered from the said room. Evidence of PWs 8 and 13 substantially corroborated the evidence tendered by PW4. He deposed that from room No.2A in Kailas Lodge, he had recovered 96 currency notes of 500 rupee denomination under Ext.P23 search list. In the light of the said evidence, the prosecution could prove seizure of 96 currency notes of 500 rupee denomination from room No.2A in Kailas Lodge, which was in occupation of the 4th appellant and three children with him. Thereby their possession of those currency notes is established.

12. The learned counsel for the appellants could not point out any reason to vary or set aside the findings of the trial court that the appellants were found in possession of the currency notes as alleged in the charge. Further finding that the currency notes of rupees 1000 and 500 denominations found in possession of the appellants were counterfeit notes, which was based on Ext.P40, the report issued from the Forensic Science Laboratory, Thiruvananthapuram is also unassailable. No reason to discard Ext.P40 report is urged or substantiated.



13. The next contention of the learned counsel for the appellants is that the facts proved would not amount to an offence under Section 489B, but only under Section 489C of the IPC. It is contended that the ingredients required to establish an offence under Section 489B that selling, buying, receiving, or otherwise using or trafficking has not been established. It is added in the above context that no such circumstance has been put to the appellants during their examination under Section 313 of the Code. Accordingly, it is contended that the appellants can be held responsible only for possession punishable under Section 489C, and not for an offence punishable under Section 489B of the IPC.

14. In **M.Mammutti v. State of Karnataka [AIR 1979 SC 1705]** it was held that if specific question as to the possession of the counterfeit notes and the way in which the accused used or intended to use the counterfeit notes are not put to the accused during their questioning, it is impossible to convict them for possession and use of the counterfeit notes. On a perusal of the records of examination of the appellants



under Section 313 of the Code, it is explicit that every aspect of the evidence concerning possession of and the attempt to use the currency notes in question were put to them. Therefore, there is no infraction in the examination of the appellants so as to attract the illegally as held in **M.Mammutti** (supra).

15. The learned Senior Counsel for the respondents placed reliance on **Narendra Prasad v. State of West Bengal [2017 CriLJ 2780]** and **Jubeda Chitrakar @ Jaba v. State of West Bengal [2020 CriLJ 746]** in order to contend that when such a bulk quantity of currency notes were found in the possession of the appellants, the irresistible conclusion would be that they trafficked the currency notes knowing to be counterfeit ones. A Division Bench of the Calcutta High Court in **Jubeda Chitrakar @ Jaba** (supra) held that when the accused person is found carrying sizeable quantity of fake currency notes on a public road, or otherwise, in a concealed manner, it would amount to active transportation of such currency notes at the time when the accused person is apprehended. It was



also held that if no explanation was offered by the accused person when questioned under Section 313 of the Code regarding the possession of the counterfeit currency, the burden of proof of facts within the knowledge of such person was held as not discharged by that person in terms of Section 106 of the Evidence Act. A similar view was taken in **Narendra Prasad** (supra) also.

16. As stated, the appellants and their companion children were in possession of 139 notes of 1000 rupee and 168 notes of 500 rupee denominations. One among them was proved to have attempted to transact a 1000 rupee counterfeit note. The appellants came to Kerala and stayed in lodges and they are Hindi speaking persons. They did not offer any explanation for the possession of such a quantity of counterfeit currency notes. In such circumstances, the irresistible conclusion is that they carried and possessed the counterfeit currency notes with the object of transacting the same amounting to trafficking of counterfeit currency notes, and not merely possession with intent to use.



17. From the aforesaid facts and circumstances, It can be said to be that the acts committed by the appellants amounted to trafficking of counterfeit currency notes, which is punishable under Section 489B of the IPC. The conspiracy hatched by the appellants in order for such an act is also evident from the way in which they possessed the currency notes. Therefore, their conviction recorded by the trial court for the offences punishable under Sections 120B, 489B and 498C of the IPC is not liable to be interfered with.

18. The sentence imposed is ten years rigorous imprisonment. In the aforementioned circumstances, I am of the view that the term of sentence imposed for the offence punishable under Section 120B and 489B of the IPC are exorbitant. Therefore, the sentence for the said offences is altered to rigorous imprisonment for a period of seven years.

19. The sentence is therefore modified and each of the appellants is sentenced to undergo rigorous imprisonment for a period of seven years under Section 120B and 489B of the IPC. Sentence for the offence under Section 489C is



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confirmed. The fine imposed and default sentence shall be the same. The terms of the substantive sentence shall run concurrently. Set off is allowed.

The appeal is allowed to the above extent.

Sd/-

P.G. AJITHKUMAR, JUDGE

dkr