



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 31<sup>ST</sup> DAY OF AUGUST, 2024**

**BEFORE**

**THE HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR**

**CRIMINAL APPEAL NO. 55 OF 2013 (C)**

**BETWEEN:**

T.N. KUMARA  
S/O NINGANNA,  
AGED ABOUT 31 YEARS,  
NO.481, D.SUBBAIAH ROAD,  
CHAMARAJA MOHALLA,  
MYSORE- 570 024

...APPELLANT

(BY SRI P. NATARAJU, ADVOCATE)

**AND:**

STATE OF KARNATAKA  
BY LAKSHMIPURAM POLICE,  
REPRESENTED BY  
STATE PUBLIC PROSECUTOR,  
HIGH COURT BUILDING,  
BANGALORE- 560 001.

...RESPONDENT

(BY SRI DIVAKAR MADDUR, H.C.G.P)

THIS CRL.A. IS FILED U/S.374(2) OF CR.P.C PRAYING TO SET ASIDE THE JUDGMENT AND ORDER PASSED BY THE LEARNED PRINCIPAL DISTRICT AND SESSIONS JUDGE AT MYSORE, IN SC S.C.NO.12/2012 DATED 03.01.2013 AND ACQUIT THE APPELLANT BY ALLOWING THIS APPEAL IN THE INTEREST OF JUSTICE AND EQUITY.

THIS CRIMINAL APPEAL HAVING BEEN RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT, DELIVERED/PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR





## **CAV JUDGMENT**

(PER: HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR)

The appellant has called in question the judgment of his conviction and order of sentence dated 3<sup>rd</sup> January 2013 passed by the Prl. District and Sessions Judge, Mysore in SC No.12/2012 finding him guilty of committing the offences under Section 489B and C of Indian Penal Code, 1860 (for short `IPC') by preferring this appeal.

2. Parties to this appeal are referred with reference to their rank before the trial Court for the sake of convenience.

**The facts leading upto this appeal in brief are as under:**

That the accused on 2.3.2010 at 12.30 p.m. near the Institute of Engineering Building, Mysore by using the counterfeit currency notes with an intention to trafficking the same and when the raid was conducted by the IO, he



was found in possession of 30 counterfeit currency notes bearing single currency 2BE901745 of denominations of Rs.500/- each knowing fully well that the same were counterfeit notes with an intention to use the same as genuine notes. Thus, he has committed the offence under Sections 489-B and C of IPC.

3. Accordingly, at the spot itself the PSI prepared the panchanama as per Ex.P1 and based upon that, by apprehending the accused, seized the counterfeit notes. The then PSI B.Puttannaiah lodged a complaint as per Ex.P2 before the Police Inspector, Lakshmipuram Police Station, Mysore City. The same was registered in Crime No.42/2010 for the aforesaid offences and the criminal law was set in motion.

4. Thereafter, the accused was produced before the Court. After completion of the investigation, the Police Inspector of Lakshmipuram P.S filed a charge sheet



against the accused for the offences under Section 489-B and C of IPC.

5. Before the trial Court to bring home the guilt of the accused, prosecution has examined seven witnesses from PWs.1 to 7 and got marked Ex.P1 to 5 with respective signatures and also MO nos. 1 to 3. During the course of cross-examination, a portion of statement of PW.6 P.N.Somashekar was marked at Ex.D1.

6. The learned trial Court on hearing the arguments and on evaluation of the evidence found the accused guilty of committing the aforesaid offences and sentenced him as under:

*"The Accused shall be convicted for the offence under section 489C, I am of the opinion that, ends of justice would be met by imposing to punish the accused of rigorous imprisonment for a term of FIVE YEARS and he shall also be liable to pay fine of Rs.3,000/- [RUPEES THREE THOUSAND ONLY] and in default to undergo imprisonment for THREE MONTHS.*

*Issue conviction warrant.*



*Benefit of set off under Section 428 of Cr.P.C. is given to the Accused.*

*Material objects 1-cover and 3-cloth cover since worthless are destroyed after appeal period is over. Material objects 2-30 notes of rupees five hundred denominations each shall be sent to nearest treasury to dispose of the same in accordance with Rule 17 of the Karnataka Criminal Rules of Practice 1968".*

7. This is how the accused is before this Court challenging the said judgment of conviction and order of sentence.

8. The learned counsel for the appellant accused with all force submits that, though it is alleged that the accused with an intention to traffic the counterfeit currency notes was caught hold by the IO and from him, 30 notes were seized. According to his submission, evidence placed on record by the prosecution is not sufficient to prove the guilt of the accused. When the so called raid was conducted accused was in possession of his purse and Rs.200/- which were not seized by the IO. The very ingredients of the offence so made out against the



accused are not duly proved in accordance with law. The panchas have not supported the contents of the panchanama. There is a distance of 2 furlong from the scene of offence to the Police Station and the very raid appears to be a created and concocted one. Relying upon the evidence placed on record by the prosecution, it is submitted that there is a doubt in the case of the prosecution and that benefit of doubt has to be extended to the accused. Therefore, it is prayed to allow the appeal and set aside the impugned judgment.

9. As against this submission, learned HCGP submits that, the very nature of the offences show that accused had an intention to circulate the counterfeit notes amongst the public at large. On getting such information, the IO along with panchas went near the accused, watched his activities of attempting to circulate the counterfeit notes and after confirmation of the same, a raid was conducted. Accused has not offered any explanation about possession of the same. He was found with photocopies



(Xerox) of the counterfeit notes which were made to believe that they are the real currency notes. The IO has sent the said seized counterfeit notes to the Bharateeya Reserve Bank and got confirmed as per the report of the Reserve Bank that, they are the counterfeit notes. It is his submission that, learned trial Court considering all these aspects connecting the guilt of the accused has rightly convicted and sentenced the accused. According to him, this judgment of conviction and order of sentence do not require any interference by this Court. He prays to dismiss the appeal.

10. Having heard the arguments of both the side and on perusal of the records placed on record, the following point arises for my consideration:

“Whether the trial Court has committed any illegality or infirmity in convicting and sentencing the accused for the offences under Section 489-B and C of IPC?”



11. So far as documentary evidence is concerned, the main document relied upon by the prosecution i.e Ex.P2 the complaint filed by the then PSI B.Puttannaiah wherein he has stated, that at 11.00 a.m. on 2.3.2010, when he was in the police station, he received a credible information about attempt to circulate the counterfeit notes near the Institute of Engineering Building on the road leading to Deputy Commissioner's office, Mysuru stating that one person by wearing blue shirt and cement colour pant by keeping the counterfeit notes is attempting to circulate the same amongst the public. Immediately, he called the panchayathdars, his staff by name ASI R.Nagappa, Head Constables and went in Departmental jeep and reached the said spot at 12.00 noon. When they reached near the Institute of Engineering building he noticed standing of a person wearing blue shirt and cement colour pant near the building. On seeing the police jeep he tried to run away. But, he was caught hold by the staff. When he enquired, accused told his name as T.N.Kumara and his address. When a personal search of





the accused was made, he was found in possession of 30 counterfeit notes of 500 denominations each with one single currency no. 2BE901745. They were all counterfeit notes. Therefore, he prepared the panchanama in the presence of panchas as per Ex.P1, apprehended the accused, came to the police station and lodged a complaint as per Ex.P2. Handed over investigation to the IO.

12. This IO on taking up investigation made arrangements to send the so called counterfeit notes to the Bharathiya Reserve Bank Note Mudrana Pvt.Ltd., to get an opinion by addressing a confidential letter along with the currency notes. It was opined by the Bharathiya Reserve Bank that they are not genuine Indian currency notes. To that effect, a report was sent as per Ex.P3.

13. PW.1 being complainant reiterated the contents of panchanama and complaint in his evidence on oath. Though it is suggested to PW.1 that, he has not produced



the Station House Diary and the place where the accused was standing is a public place and there is a movement of public there, this evidence stated by PW.1 does not help the defence.

14. From the trend of cross-examination directed to PW.1, it shows that presence of accused near the said building is not disputed by the defence. It has come in the evidence that, except the said counterfeit notes, accused did not possess any objects with him. Relying upon this evidence, the counsel for the appellant submits that the accused was found in possession of purse and Rs.200/- currency note and they were not seized by the Police. Merely because the purse and currency note is not seized by the Police, that will not falsify the very seizure of the 30 counterfeit notes from the possession of accused by this PW.1. He admits that he had not taken the signature of public who were moving on the road. Throughout his evidence he is consistent that, accused was found in possession the said counterfeit currency notes.



15. To know that the said counterfeit notes were the fake currency notes, the prosecution has examined PW.2 Kailash Yeolekar, the then Deputy Manager, Bharathiya Reserve Bank Note Mudrana Mysore. He is specific in his say that, as per the requisition of ACP, Krishanaraja Division, Mysore City, on 12.3.2010 he examined the 30 suspected currency notes of 500 denomination and they were not genuine Indian currency notes. He also stated about his observation on the suspected notes in his evidence on oath. This PW.2 was not cross-examined by the defence. That means the MO Nos.1& 2 and 30 currency notes were not the genuine Indian currency notes is admitted by the defence. When these currency notes were not the genuine Indian currency notes, then the question arises how this accused came in possession of said notes. For this, there is no explanation offered by the accused either in the cross-examination or during his statement before the Court recorded under Section 313 of Cr.PC.



16. PW.1 the complainant is specific about the possession of these 30 fake counterfeit notes by the accused and attempt of trafficking the same amongst the public intensively by the accused. Evidence of PW.1 is corroborated by the official witness by name Shivaswamy the then Head Constable of Lakshmipuram Police Station. So also, PW.4 Mariswamy M.L., the independent witness also corroborates the evidence of PW.1 and 3 in material particulars. This PW.3 accompanied the police officers and is specific that near the Institute of Engineering building on that day, accused was found standing by wearing blue shirt and cement colour pant and was found circulating the counterfeit notes. On conducting raid accused found in possession of said counterfeit notes. The IO prepared the panchanama in his presence. He acted as a pancha to the said panchanama. The seizure of the said currency notes was done by the IO. He speaks that accused was found in possession of leather purse and one diary so also two Indian currency notes of Rs.100/- denomination. Evidence of PW.4 shows that he accompanied the police when the



so called raid was conducted on the accused. He is consistent about the intentional trafficking of said counterfeit currency notes by the accused. PW.5 R.Madappa is another ASI during the relevant time who accompanied PW.1, 3 and 4. He too has been cross examined at length but nothing worth is elicited. The another independent witness is PW.6 P.N. Somashekar. He corroborates the evidence of PW.4, the pancha and seizure of the said 30 counterfeit currency notes from the possession of the accused.

17. PW.7 the IO has spoken about filing of a charge sheet against the accused after collecting necessary documents. He admits that accused is running a mobile shop at Mysore.

18. The learned trial Court, considering the evidence placed on record by the prosecution has come to the conclusion that, these 30 notes of counterfeit notes marked as MO No.2 were in possession of the accused and



intentionally he was found circulating the same amongst the public. Though the argument is advanced by the appellant's counsel that these PWs 1,3 and 5 are official witnesses and their evidence cannot be accepted. Evidently PW.4 and 6 are the panchas and they have spoken in line with the contents of panchanama and its contents. One cannot draw a presumption that police witnesses are not trustworthy witnesses. Under the provisions of Indian Evidence Act, they are also competent witnesses and if their evidence is trustworthy, such evidence has to be accepted. PW.1 has consistently deposed about receiving of the information with regard to the trafficking of the currency notes by the accused and conducting raid in the presence of panchas, seizure of said MO No.2. Thus, the ingredients so stated under Section 489-B and C of the Indian Penal Code is duly proved by the evidence of witnesses examined by the prosecution.

19. The learned trial Court has opined that there is no evidence about selling, buying or trafficking of any



notes by the accused and has opined tht, ingredients of Section 489-B has not been established.

20. The evidence of PW.2 shows that, how he came to the conclusion that, the said subject MO No.2 were the counterfeit currency notes and they are not the genuine Indian currency notes. Accused was found in possession of said notes and there is no explanation offered by the accused that how he came in possession of the said counterfeit notes. From the evidence brought on record, as per the case of the prosecution the offence under Section 489-C is duly proved in accordance with law.

21. As rightly observed by the trial Court, there is no evidence that there is no reason to believe the said currency notes were forged one. None of the witnesses have noticed about the *mens rea* of accused which is conspicuously absent in this case. Therefore, in the absence of any evidence brought on record by prosecution, it has failed to demonstrate that the accused



has committed the offence under Section 489-B of the IPC. Whereas, the accused was found in possession of these counterfeit currency notes which were not genuine Indian currency notes. Accused was having knowledge about the same and offered no explanation. After seizure of currency notes as per the prosecution papers they were seized. There is evidence that accused was in custody of the said counterfeit currency notes and on seeing the police, he tried to escape from the said place. But, he was caught hold. The conduct of the accused shows his guilty mind and conscious possession. The Hon'ble Tripura High Court in ***Biplab Bhar vs. State of Tripura*** reported in ***2017 Crl.L.J. 1621*** has held that "*accused in possession of counterfeit notes on seeing police tried to escape. Conduct of the accused showed guilty mind and conscious possession of fake currency. Accused was convicted and sentenced under Section 489C of IPC.*"

22. Here in this case also accused was found in possession of counterfeit currency note and were





recovered from his possessions which were fake to the naked eye. All the notes contained same number, they were the photocopies of genuine note and the colour is different. This itself is sufficient to prove *mens rea*.

23. The co-ordinate Bench of this court in ***Mulchand vs. State through the Market PS Belgaum District, Belgaum*** reported in ***2014 (1) Kar.L.J. 66 [Crl.A.No.2510 of 2009]*** has held that, "accused aged 55 years, found in possession of 452 counterfeit currency notes worth of Rs.100/- denomination each. On testing found to be fake. The trial Court convicted the accused. High Court re-appreciated the evidence. Conviction recorded by the trial Court was confirmed and appeal was dismissed".

24. If the aforesaid analogy is applied to the present facts of the case, it goes without saying that, accused was found in possession of 30 such counterfeit currency notes which were not real Indian currency notes as per the report of Bharathiya Reserve Bank and were



recovered and marked as MO NO.2 and thus has committed the offence under section 489-C of IPC. Therefore, I do not find any factual or legal error committed by the trial Court in coming to such conclusion. I do not find any illegality or infirmity in the impugned judgment. Therefore, appeal lacks merit and is liable to be rejected.

25. The impugned judgment of conviction and order of sentence is to be confirmed.

Resultantly, I pass the following;

**ORDER**

- i) Appeal is ***rejected***.
  
- ii) Impugned judgment of conviction and order of sentence dated 3.1.2013 passed in SC No. 12/2012 by the Prl.District and Sessions Judge, Mysore, is hereby confirmed.



- iii) The accused shall surrender before the trial Court forthwith to undergo sentence. The Trial Court shall take steps to secure his presence in accordance with law and commit him to the prison to undergo sentence.
- iv) The operative portion of this order shall be sent to the trial Court forthwith by mail for compliance.
- v) Send back the Trial Court Records along with copy of this judgment forthwith.

**Sd/-  
(RAMACHANDRA D. HUDDAR)  
JUDGE**

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List No.: 19 Sl No.: 3