

Vijayan vs State of Kerala

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Court : Kerala

Decided On : May-30-2024

Judge : Honourable Mr.Justice P.G. Ajithkumar

Appeal No. : CRL.A/421/2014

Appellant : Vijayan

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR
THURSDAY, THE 30TH DAY OF MAY 2024 / 9TH JYAISHTA, 1946
CRL.APPEAL NO. 421 OF 2014 AGAINST THE JUDGMENT DATED
30.04.2014 IN SC NO.348 OF 2012 OF THE VTH ADDITIONAL
DISTRICT COURT, ERNAKULAM

APPELLANT/3RD ACCUSED: VIJAYAN AGED 50 YEARS,
S/O.GOPALAN, NAMBIATH VEEDU, NEAR N.S.S.SCHOOL,
AIRAPURAM VILLAGE, KUNNATHUNADU TALUK. BY ADV
SRI.RAMESH .P RESPONDENTS/STATE & COMPLAINANT: 1 STATE
OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH

COURT OF KERALA, ERNAKULAM-682 031. 2 DETECTIVE INSPECTOR CBCID, OCW II, ERNAKULAM. SMT.PUSHPALATHA M.K., SR.PUBLIC PROSECUTOR THIS CRIMINAL APPEAL HAVING COME UP FOR FINAL HEARING ON 21.05.2024, ALONG WITH CRL.A.422/2014, THE COURT ON 30.05.2024 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR THURSDAY, THE 30TH DAY OF MAY 2024 / 9TH JYASHTA, 1946 CRL.APPEAL NO. 422 OF 2014 AGAINST THE JUDGMENT DATED 30.04.2014 IN SC NO.348 OF 2012 OF THE VTH ADDITIONAL DISTRICT COURT, ERNAKULAM APPELLANTS/ACCUSED 1 & 2: 1 MOHANAN AGED 52 YEARS S/O KESAVAN, RESIDING AT CHETHUKATT VEEDU, ARAYANI CHUVADU BHAGAM, KOZHIPPILLY KARA, PALAKKUZHA VILLAGE, ERNAKULAM DISTRICT, PINCODE-686662. 2 VAISHAKH AGED 22 YEARS S/O MOHANAN, RESIDING AT CHETHUKATT VEEDU, ARAYANI CHUVADU BHAGAM, KOZHIPPILLY KARA, PALAKKUZHA VILLAGE, ERNAKULAM DISTRICT, PINCODE-686662. BY ADV SRI.PEEYUS A.KOTTAM RESPONDENT/COMPLAINANT & STATE: STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, COCHIN-682031, (REPRESENTED BY DETECTIVE INSPECTOR, CBCID, OCW II, ERNAKULAM). SMT.PUSHPALATHA M.K., SR.PUBLIC PROSECUTOR THIS CRIMINAL APPEAL HAVING COME UP FOR FINAL HEARING ON 21.05.2024, ALONG WITH CRL.A.421/2014, THE COURT ON 30.05.2024 DELIVERED THE FOLLOWING:

P.G. AJITHKUMAR, J.

----- Dated this the 30th day of

May, 2024

JUDGMENT

These appeals are filed under Section 374(2) of the Code of Criminal Procedure, 1973 (Code).

2. Accused Nos.1 to 3 in S.C.No.348 of 2012 before

the V Additional Sessions Judge, Ernakulam, are the appellants. They were convicted by the learned Additional Sessions Judge as per the judgment dated 30.04.2014 for an offence punishable under Section 489C read with Section 34 of the Indian Penal Code, 1860 (IPC). Aggrieved by the said conviction and consequent sentence, accused No.3 filed Crl.Appeal No.421 of 2014 and accused Nos.1 and 2 filed Crl.Appeal No.422 of 2014. Accused No.6 in the final report who also tried along with them was acquitted. Accused Nos.4 and 5 in the final report were not available for trial since they were absconding.

3. Heard the learned counsel for the appellants in the respective appeals and the learned Public Prosecutor.

4. The prosecution was launched with the following

allegations: At about 1.40 p. m. on 28.03.2007 accused Nos.1 to 3 were found at the KSRTC bus stand, Perumbavoor possessed with counterfeit currency notes of 100 rupee denomination. The 1 st accused was in possession of 15 notes, the 2 nd accused 3 notes and the 3rd accused 8 notes. In the ensued search, 25 similar counterfeit notes were found in the house of the 1 st accused and four such currency notes were found in the house of the 3rd accused. It was the 4th accused, who gave the said counterfeit currency notes to accused Nos.1 to 3. The 4 th accused obtained the same from the 5th accused and he from the 6th accused. Accused Nos.1 to 3 possessed the counterfeit currency notes knowingly and with the intention of using them as genuine ones.

5. At the trial PWs.1 to 16 were examined and Exts.P1

to P22 were marked. MOs.1 to 4 were identified also. During the examination under Section 313(1)(b) of the Code, all the accused denied the incriminating circumstances appeared

against them in evidence. They claimed innocence. DWs.1 to 4 were examined and Exts.D1 and D2 were marked on the side of the accused. The trial court, after considering the said evidence, found accused No.4 not guilty, whereas accused Nos.1 to 3 guilty of the offence under Section 489C and not guilty of the offence under Section 489B of the IPC.

6. The contentions of the appellants are that they

possessed the currency notes without knowing them to be counterfeit ones and therefore their conviction for offence under section 489C of the IPC is wrong. Although the factum of recovery of currency notes from their possession by PW14

is not assailed, the case mooted by the prosecution concerning the manner in which such recoveries were effected is stoutly denied. It is their contention that in relation to the agreement for sale of the motorcycle of accused No.1 to accused No.4, Soman, an amount of Rs.5,500/- was paid and it was the said currency notes which were found in their possession. Not only that PW14 and other witnesses were cross-examined in that line, but also the 1 st accused deposed

before the court as DW4 admitting that they were in possession of currency notes while they were taken to Perumbavoor Police Station.

7. PW14, the Circle Inspector of Police, Perumbavoor,

is the detecting officer. Going by his version, accused Nos.1 to 3 were intercepted by him along with his colleagues at the KSRTC bus stand at Perumbavoor on getting a reliable information regarding their possessing counterfeit currency notes. He deposed that on a search accused Nos.1 to 3 were

found in possession of counterfeit currency notes and therefore he arrested them. He seized the currency notes as per Ext.P1 mahazar with PWs.1 and 2 as witnesses. Both these witnesses did not support the case of the prosecution. They

deposed to have signed the mahazar at the police station. They denied having seen the seizure of the currency notes. The motorcycle in the possession of the 2nd accused was seized as per Ext.P3 mahazar.

8. Soon after the arrest of accused Nos.1 to 3, houses of accused No.1 and 3 were inspected. It is the version of

PW14 that based on the information divulged by accused No.1, 25 currency notes of 100 rupees denomination were recovered from his house. Ext.P4 is the mahazar for the same. PWs.3 and 4 are the witnesses to it. They did not ascribe to the version of PW14 concerning the recovery. PWs.3 and 4 maintained that they did not see any recovery, but as directed by the police they signed the mahazar.

9. Similar is about the recovery of four currency notes

from the house of accused No.3. PWs.5 and 6 are the witnesses for Ext.P9 mahazar prepared for that purpose. The case of the prosecution is that as pointed out by accused No.3, the currency notes were taken from his house. PWs.5 and 6 denounced that version by stating that accused No.3 was not with the police at that time. MO2 series, MO3 series and MO4 series are the counterfeit currency notes seized respectively under Exts.P1, P4 and P9 mahazars.

10. The fact that these are counterfeit currency notes is not in dispute. That fact is established by Ext.P21 report issued by Currency Notes Press, Nashik. Recovery of MOs.2, 3

and 4 series currency notes from the possession of accused Nos.1 to 3 is practically not disputed. The version of PW14 insofar as the seizure of the currency notes under Ext. P1 is supported by PW13, who is an officer accompanied PW14 and in whose handwriting that Ext.P1 mahazar was prepared. In the absence of any denial, it can certainly be held that MOs 2, 3 and 4 series currency notes were seized from the possession or custody of accused Nos.1 to 3.

11. In the aforesaid factual scenario, the question is,

whether accused Nos.1 to 3 possessed counterfeit currency notes knowing or having reason to believe the same to be counterfeit ones and intending to use the same as genuine.

12. The learned counsel for the appellants would

submit that in the light of the circumstances emerging from the oral evidence of PW14 and attending circumstances, such a knowledge cannot be attributed to accused Nos.1 to 3. In that regard, the learned counsel for accused Nos.1 to 3 placed reliance on *Kuttan Nadar v. State* [2002 (2) KLJ 362], *Habi @ Habibur Rahaman Mallick v. State of West*

Bengal [2023 CrLJ 3476] and *Sk.Mukksetul and another v. State of West Bengal* [2019 CrLJ 1730].

13. DW4 is accused No.1. He deposed as to how he as

well as accused Nos.2 and 3 came in possession of the currency notes in question. It is his version that he entered into an agreement for sale of his motorcycle to accused No.4 on 27.03.2007 for Rs.45,000/- and an advance amount of Rs.5,500/- was paid. It was the said amount that was in possession of himself and other accused and that they never knew that the said currency notes were counterfeit. He also stated that he had to have a quarrel with accused No.3 at the bus stand regarding payment of the balance brokerage following which they were taken to police station and his son came to the police station enquiring about them.

14. The view taken in the aforementioned decisions by

this Court as well as Calcutta High Court is that unless the prosecution succeeded in proving that the accused possessed currency notes with sufficient mens rea as defined in Section 489C of the IPC, he could not be convicted. It is indisputable that possession of currency notes knowing them to be counterfeit and intention to use the same as genuine are the essential ingredients of the offence under Section 489C of the IPC. The question is, can from the evidence in this case such a mens rea on the part of accused Nos.1 to 3 be inferred?

15. In Md.Kamirul Islam v. Central Bureau of

Investigation [2024 (2) KHC 668] this Court after considering the law laid down by a Division Bench of the Calcutta High Court in Jubeda Chitrakar @ Jaba v. State of West Bengal [2020 Cri.LJ 746] held that when the accused is found carrying a sizable quantity of currency notes along a public road in a concealed manner, that is an indicator to his dishonest intention. It is then, for the accused to explain such possession and lack of knowledge that the currency notes were counterfeit ones.

16. The recital in Ext.P1 would show that on PW14 questioning, accused Nos.1 to 3 took out the currency notes from their pockets and handed over to him. The learned

counsel for accused Nos.1 and 2 raised a contention in that regard that when DW2, a police personnel accompanied PW14 admitted after perusal of Ext.D2 a newspaper carrying the news regarding the arrest in question that no pocket to the T- shirt worn by the 2nd accused was visible, the version of PW14 cannot be believed. That contention does not assume any importance inasmuch as the admitted case is that there was recovery. The effect of it, to the maximum, is that the recovery might not be as narrated by PW14.

17. As pointed out above recital in Ext.P1 is that

accused Nos.1 to 3 handed over currency notes. Whereas, PW14 deposed in court that he recovered currency notes from their possession on a search of their body. In the absence of any independent evidence, that discrepancy carries some importance. If accused Nos.1 to 3 voluntarily gave those currency notes that would create an impression that they did not have any dishonest intention in carrying those notes.

18. Similar is in respect of the recovery of currency notes from the houses of accused Nos.1 and 3. PW14 does

not have a case that in a search such currency notes were recovered. On the other hand, the recoveries were effected on the basis of voluntary disclosures made by accused Nos.1 and

3. In the said context the defence set forth by accused Nos.1 to 3 has to be considered.

19. DW4 deposed in court about the circumstances in

which he as well as accused Nos.2 and 3 happened to possess the currency notes in question. Such a version brought forth at the defence evidence stage singularly would not make any headway in favour of the appellants. Nonetheless, the categorical version of DW4, which is not effectively challenged in the cross-examination, creates a doubt about the allegation that accused Nos.1 to 3 possessed the currency notes knowing them to be counterfeit ones. The evidence tendered by the prosecution is not enough to explain the said doubt. It is not a case of possession of bulk quantity of currency notes in a concealed manner either. Taking all such aspects into account, I am of the view that the prosecution evidence is insufficient to prove beyond doubt that accused Nos.1 to 3

possessed counterfeit currency notes knowing them to be counterfeit ones or with dishonest intention of using them as genuine ones. Therefore, their conviction by the trial court is untenable in law.

20. The appeals are accordingly allowed. The judgment

dated 30.04.2014 in S.C.No.348 of 2012 of the V Additional Sessions Court, Ernakulam is set aside. Accused Nos.1 to 3 are found not guilty of the offence under Section 489C of the IPC and acquitted. They are set at liberty. Sd/- P.G. AJITHKUMAR, JUDGE dkr

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