

**Saiful Islam vs State of Kerala**

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**SooperKanoon Citation :** [sooperkanoon.com/1745249](http://sooperkanoon.com/1745249)

**Court :** Kerala

**Decided On :** Jun-29-2020

**Judge :** Honourable Mr. Justice P.V.Kunhikrishnan

**Appeal No. :** CRL.A/1675/2005

**Appellant :** Saiful Islam

**Respondent :** State of Kerala

**Judgement :**

CRL.A.No.1675 OF 2005 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN  
MONDAY, THE 29TH DAY OF JUNE 2020 / 8TH ASHADHA, 1942  
CRL.A.No.1675 OF 2005 AGAINST THE JUDGMENT IN SC 154/2003  
DATED 30-08-2005 OF ADDITIONAL SESSIONS COURT, FAST  
TRACK COURT NO.III (ADHOC), MANJERI APPELLANT/ACCUSED:  
SAIFUL ISLAM, S/O.MUHAMMED, KARUVAMBRAM AMSOM,  
PUKAYOOR RESIDENCE, MANJERI. BY ADV. SOJAN MICHEAL  
RESPONDENT/COMPLAINANT: STATE OF KERALA REP.BY PUBLIC  
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. BY  
SR.PUBLIC PROSECUTOR SRI.B.JAYASURYA THIS CRIMINAL

APPEAL HAVING BEEN FINALLY HEARD ON 29-06-2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:  
CRL.A.No.1675 OF 2005 2

## **JUDGMENT**

Dated this the 29th day of June 2020

The above appeal is filed by the accused in S.C.No.154/2003 on the file of the Additional Sessions Judge, Fast track Court No.III (Ad hoc), Manjeri. The accused was chargesheeted by the Deputy Superintendent of Police, CBCID (CFS), Kozhikode alleging the offences punishable under Sections 489B and 489C of the Indian Penal Code.

2. The prosecution case, in short, is that on 15.2.2000 at

about 7.30 pm, the accused possessed and used one forged 100 rupees notes for buying ticket in the counter of Seethi Haji Stadium to see a football match. The counter staff, on entertaining doubt with respect of the genuineness of 100 rupees note tendered has not given the balance to the accused and on questioning the accused, found nine more forged 100 rupees notes with the accused. Since some of the above notes have the same numbers, the counter staff brought the accused along with the forged notes before the Sub-Inspector of Police, Edavanna Police Station. The Sub- Inspector of Police, Edavanna Police Station enquired about the matter and caused arrest of the accused. Thereafter, the

CRL.A.No.1675 OF 2005 3 police conducted investigation. The investigation was handed over to the Deputy Superintendent of Police, CBCID. After completing the investigation, the Deputy Superintendent of Police, CBCID laid charge before the court. Hence, according to the prosecution, the accused committed the offence.

3. To substantiate the case, the prosecution examined PW1 to PW5. Exts.P1 to P12 are the documents marked on the side of the prosecution. MO1 series are the

counterfeit notes.

4. After going through the evidence and the documents,

the trial court found that the accused committed the offence under Sections 489B and 489C of the Indian Penal Code. The accused was convicted and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.10,000/- each for the offences under Sections 489B and 489C of IPC. In default of payment of fine, the accused is directed to undergo simple imprisonment for six months each. Aggrieved by the conviction and sentence, this Criminal Appeal is filed.

5. The point for consideration in this appeal is whether the accused committed the offence under Sections 489B and 489C of IPC.

6. Altogether five witnesses were examined by the CRL.A.No.1675 OF 2005 4

prosecution. PW1 is the defacto complainant who allegedly submitted Ext.P1 petition before the police, along with the accused. He turned hostile to the prosecution. PW2 is the Sub Inspector of Police who seized MO1 series, the alleged counterfeit notes, 10 in number produced by PW1 in the police station. PW1 placed the same before him along with Ext.P1. PW2 prepared Ext.P3 and seized MO1 series. Ext.P1 is a written complaint given by PW1. PW3 and PW4 are the witnesses to Ext.P3 mahazar. They turned hostile to the prosecution. PW5 is the investigating officer.

7. Admittedly, in this case, no counterfeit note is seized

from the possession of the accused by PW2, the Sub Inspector. According to him, PW1 produced ten counterfeit notes before him along with the accused. He submitted Ext.P1 complaint. PW1 deposed before the court that while he was doing duty as a cashier, in connection with the football tournament conducted at Edavanna in 2000, he was an

attender of Edavanna Service Co-operative Bank. The Edavanna Service Co-operative Bank was in charge of the distribution of tickets. In connection with the same, PW1 deposed that he was in the ticket counter. According to him, the match will start at 7 pm, and the ticket distribution will begin from 6.15 pm to 6.45 pm. PW1

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categorically deposed that he cannot say whether the accused came to collect the ticket on that particular day. He deposed that he did not see the accused. But he deposed that a suspected counterfeit note came to his hand on that day. At this stage, the prosecutor declared him hostile. He admitted the signature in Ext.P1 complaint given by him. He deposed that, he prepared Ext.P1 without understanding the matter properly. He also denied the statement given to the police. He deposed that, he received only one counterfeit note in the counter. When MO1 series were shown to him, he deposed that, he cannot say which is the note he received in the counter. In the cross- examination, PW1 deposed that he doesn't know the accused. He entrusted the counterfeit note received by him from the counter to the duty police. Thereafter, he was summoned to the police station after two days. According to him, he submitted Ext.P1 because of the threat of the station Sub Inspector that, if such a complaint is not given, a case will be registered against him. This is the evidence adduced by PW1.

8. PW2 is the Sub Inspector of Police, Edavanna Police

Station. According to him, PW1 came to the police station with the accused and submitted Ext.P1 complaint with 10 counterfeit notes. He deposed that, PW1 informed him that, the accused CRL.A.No.1675 OF 2005 6 came with the counterfeit note for collecting tickets. According to PW2, PW1 handed over MO1 series counterfeit notes to him. Accordingly, PW2 registered Ext.P2 FIR. The accused was arrested. He conducted preliminary investigation in this case.

9. PW3 and PW4 turned hostile to the prosecution. They

admitted their signature in Ext.P3 seizure mahazar. Therefore, the only evidence available in this case is the evidence of PW2, Sub Inspector. PW2 has no case that, any counterfeit note was seized by him from the possession of the accused. According to PW2, PW1 produced accused along with 10 counterfeit notes. But PW1 turned hostile to the prosecution. PW1 has no case that, MO1 series are seized from the accused. In such circumstances, there is no evidence, in this case, to show that, MO1 series are seized from the possession of the accused. According to the prosecution, PW1 took ten counterfeit notes from the accused. But as stated earlier, he turned hostile to the prosecution. Therefore, there is absolutely no evidence, in this case, to show that, the accused was in possession of 10 MO1 series counterfeit notes. There is no evidence to connect MO1 series counterfeit notes with the accused. In such circumstances, based on evidence of PW1, this court cannot convict the accused. I think, the accused is entitled the benefit of doubt.

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Hence, this Crl.Appeal is allowed. The conviction and sentence imposed on the appellant as per the judgment dated 30.08.2005 in S.C. No.154 of 2003 on the file of the Additional Sessions Judge, Fast Track Court No.III (Adhoc), Manjeri, is set aside. The appellant is set at liberty. Bail bond, if any, executed by the appellant is cancelled.

Sd/- P.V.KUNHIKRISHNAN JUDGE ab/pkk

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