

Vijayan Vs. State of Kerala

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Court : Kerala

Decided On : Jul-11-2001

Reported in : 2001(2)ALT(Cri)241; 2002CriLJ187

Judge : Mr. M.R. Hariharan Nair, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 489C

Appeal No. : Cri.A.No. 246 of 1996

Appellant : Vijayan

Respondent : State of Kerala

Advocate for Def. : V.K. Mohanan, Public Prosecutor

Advocate for Pet/Ap. : Sunny Xavier, Adv.

Disposition : Appeal dismissed

Judgement :

M.R. Hariharan Nair, J.

1. The challenge in the appeal is with regard to the conviction entered against the appellant, who was the accused in S.C.No. 157/93 of the 1st Additional Sessions Court, Kollam for the offence under S. 489-C of the Indian Penal Code and sentence of rigorous imprisonment for three years and fine of Rs. 15,000/-(in

default rigorous imprisonment for a further term of one year) imposed therefore.

2. The prosecution alleged that at about 3.00 pm on 1.10.1987 the accused approached PW3, who is a meat vendor, while he was at the Churulikkodu Junction and after introducing himself, offered to advance cash for the business of PW-3 and discuss the matter. He also took from the pocket of his underwear a handful of notes of Rs. 20/- denomination and extended it to PW-3. When PW-3 got the notes and examined, he found that its colour materially differed from that of genuine currency notes and hence became suspicious. PW-3 therefore not only did not receive it; but passed on the information to the police through his friend without causing suspicion to the accused. Subsequently, PW-1 Police Head Constable came with his party, interrogated the accused and conducted search of his body, whereupon 55 numbers of counterfeit Indian currency of Rs.20/- denomination were recovered from the shirt pocket of the accused. In due course, the accused and seized currency notes were removed to the police station and case registered and investigated.

3. The learned counsel for the appellant submitted that there are very many contradictions between the evidence of PW-1 and PWs. 3 and 4, and that PW-7, who was allegedly available at the spot at the time of seizure, was not examined. According to him, the prosecution version that the accused offered a loan to a stranger like PW-3, *prima facie*, is unbelievable. Lastly, it is contended that mere possession of currency note is not an offence and that there is no evidence adduced in the case to show that the accused had possessed the currency notes with knowledge that they were fake currency notes and also with intention to use them as genuine. The decision in *Gafoor v. State of Kerala* (1987 (2) KLT 730) is also relied on in this regard.

4. On the argument advanced in the case, the points in that arise for decision are:-

1) Whether the accused was in conscious possession of counterfeit currency notes as alleged?

2) Whether there is reliable evidence to conclude that the accused has committed the offence under S. 489-C of the IPC?

5. The points:- It is true that there is some variation between the version of PW-3 and PWs. 1 and 4. PW-3 stated in the box that after the police arrived at the spot, they searched the shirt pocket of the accused and currency notes worth Rs. 1,000/- were seized therefrom. He also stated that when the pocket of the underwear worn by the accused was searched five more fake currency notes were found therein, which were also seized. Thus, according to PW-3, out of 55 currency notes, 50 were in the pocket of the shirt and 5 others were in the pocket of the underwear. As against this, the version of PWs. 1 and 4 is that all the 55 currency notes were seized from the shirt pocket.

6. The learned Public Prosecutor, who was heard, submitted that possibly, PW-3 has committed a mistake in this regard. He pointed out in the Chief Examination that the currency notes were originally in the pocket of the underwear and that when PW-3 refused to accept the same as they appeared to be counterfeit currency notes, the accused got them back from him and put them in the shirt pocket. Thus, according to PW-3, part of the notes were originally in the pocket of the underwear and at the time when the Police arrived, all the 55 notes were in the shirt pocket and it was in these circumstances, that a mistake was committed by him.

7. Whatever that be, even if the evidence of PW-3 is not believed fully, there is evidence of PWs. 1 and 4 as to the fact that fake currency notes worth Rs. 1,100/- were actually seized from the possession of the accused.

8. It is true that CW-7, who according to the prosecution, was available at the spot during the occurrence, was not examined. Merely from this fact, no adverse inference can be drawn. It is the prerogative of the prosecution to choose the witnesses to be examined and merely because one or the other witness cited by the prosecution was not examined, it cannot be said that the prosecution case is unbelievable or foisted.

9. As regards the conduct of the accused in offering the currency notes to a stranger, what emerges from the evidence of PW-3 is that the accused, on finding that PW-3 is a meat vendor and was in need of money, had offered to advance a loan for the business purpose. Probably, the accused found him to be a gullible

person, who would take the offer easily. This circumstance also is insufficient to disbelieve the prosecution case.

10. Gafoor v. State of Kerala (1987 (2) KLT 730) is the authority for the proposition that mere possession of counterfeit currency notes is not punishable and the accused must have knowledge or reason to believe that the notes were counterfeits or forged. However, the proof required in the matter need not be through direct evidence and the circumstances of the case can be looked into. The term 'possession' as used in S. 489-C of the IPC bears a sense at variance from that in civil law. It would amount to criminal possession, if the possessor had knowledge or reason to believe that the notes were forged and if his continued possession was with the intention of foisting it on the public. If the notes were of such a nature that a mere look at them would convince anybody that they were fake notes it can be presumed that he had knowledge or reason to believe that they were counterfeit currencies. M. Mammutti v. State of Karnataka (AIR 1979 SC 1705) is the authority for the proposition.

11. PW-3 stated before court that when the currencies were taken out and shown to him even at the first blush, he was convinced that they were counterfeit notes because there was difference in colour. Thus, the accused also had every reason to know that the currency notes possessed by him and offered to PW-3 were counterfeit currencies.

12. In the circumstances, the possession of the currencies comes within the criminal possession contemplated in S. 489-C of IPC. The accused, in the circumstances, has committed the offence under S. 489-C of the IPC and he was rightly convicted. It appears, he has also suffered the full term of imprisonment including default clause.

13. In the circumstances, the appeal is found to be without merit. Dismissed.