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In Re: Md. Yusuff

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Court : Chennai

Decided On : Oct-07-1985

Reported in : 1986CriLJ2011

Judge : Maheswaran, J.

Appellant : In Re: Md. Yusuff

Judgement :
ORDER

Maheswaran, J.

1. The petitioner has been convicted of an offence punishable under Section 489-C of the Indian Penal Code and was sentenced to rigorous imprisonment for three years by the Fifth Assistant Sessions Judge, Madras. In appeal, the First Additional Sessions Judge, Madras, confirmed the conviction and the sentence and dismissed the appeal, The revision petitioner challenges the conviction and the sentence.

2. Mr. Yusuff, the revision petitioner (hereinafter referred to as the first accused) was arrested by P.W. 5 on 28-9-1972 at about 9-30 p.m. at Bangalore. That was in pursuance of a statement given by one Suban, who was arrested on 7-9-1972 at about 6-00 p.m. at Bangalore by the Sub-Inspector attached to C.B., C.I.D., Bangalore. The first accused gave a confession statement and in pursuance of the admissible portion of that statement, he took P.W. 5 to Madras Moore market and

from his shop produced a Thermos flask, M.O. 3, which concealed about 30 pieces of counterfeit 50 Dollar currency notes, M.O. 6 series, which were recovered by P.W. 5 under Ex. P-9 attested by P.W. 9 another police official. As the recovery was made at Madras, P.W. 9 took up further investigation and after completing investigation, filed the charge-sheet at Madras.

3. On the evidence adduced before the trial Judge, the first accused was found guilty of the offence under Section 489-C, I.P.C. and was convicted and sentenced as already stated. The revision petitioner challenges the conviction and the sentence.

4. Mr. Damodaran, learned Counsel for the revision petitioner raised three points. They are : (1) The witness who attested the mahazar for recovery of M.O. 6 series, has not supported the case of the prosecution and therefore the Courts below ought to have held that the recovery was not proved; (2) mere possession of counterfeit currency notes without any intention to use the same as genuine would not constitute an offence under Section 489-C, I.P.C; and (3) possession of counterfeit American Dollar will not be an offence under Section 489-C.

5. P. W. 9 who has attested Ex. P-9 under which M.O. 6 series, the counterfeit dollar notes were seized from the accused, has not supported the prosecution. He was treated as a hostile witness and therefore Ex. P-9, the mahazasr, was not marked through him. P. W, 5, Pooviah, who was the Sub'Inspector, C.B., C.I.D., Bangalore, has clearly spoken to the recovery of M.O. 6 series under Ex. P-9. There is clear evidence of P. W. 5 that P. W. 9 has attested Ex. P-9. The mere fact that P. W. 4 has been treated as a hostile witness and has not supported the case of the prosecution will not affect the probative value of Ex. P-9, for P. W. 5 speaks to the recovery and attestation by P. W. 9 and others. The evidence of the Investigating Officer need not necessarily be corroborated. One of the witnesses who attested the mahazar, Munuswami, died. There cannot be any doubt about the recovery of the currency notes. Therefore, the fact that P. W. 9 has not spoken about his attestation in Ex. P-9 does not really matter, as there is clear evidence of P. W. 5 about the seizure of M.O. 6 series and attestation of Ex. P-9 under which M.O. 6 series was seized.

6. M.O. 6 series were sent for expert opinion to the Currency Note Press, India Security Press, Nasik. The opinion of the expert in detection of forged currency and bank notes is furnished under Ex. P-2. The' report was that all the dollar bills are forged. This report together with the evidence adduced about the recovery shows that the accused was in possession of forged dollar bills. Learned Counsel pointed out that mere possession of any forged or counterfeit currency notes will not be an offence under Section 489-C, I.P.C. and that the prosecution has to prove that the accused had intention to use the same as genuine or it was used as genuine. It has to be noted here that what has been recovered is M.O. 6 series containing 30 pieces of 50 Dollar denomination. The evidence adduced shows that they were concealed in a flask in between the refill and the outer cover. It should further be noted that the defence of the accused is one of total denial. He would contend that a false case has been foisted on him. That case has been disbelieved by the Courts below and there is no explanation whatsoever for possession of those counterfeit currency notes. The large number of notes found in the shop of the accused is an important indication. In Public Prosecutor v. Kondal Rao, 1938 MWN 1121 : 1939 Cri LJ 458 Pandurang Row, J took the view that the number of counterfeit notes found in a man's possession and the circumstances in which they were found may by themselves constitute a sufficient ground for drawing the inference that the intention was to use them as genuine or that they may be used as genuine. I have earlier pointed out that the accused has not given any explanation except to say that the recovery itself is not true and that a false case has been foisted on him. That story has not been believed by the Courts below and in such circumstances, it is not possible to conceive any other intention than the intention of using the currency as genuine or that they may be used as genuine. After all, the intention has to be presumed. The possession of these counterfeit dollar bills along with other circumstances, namely, that it was concealed in between the refill and the outer cover of the flask makes it clear that the accused had reason to believe that the dollar bills were counterfeit notes and the first accused also had the intention to use them as genuine. On that view, the contention that Section 489-C, I.P.C., is not attracted has to fail.

7. Lastly, it was contended that Section 489-C, I.P.C., would not apply to counterfeiting of dollar bills. Strong reliance was placed by the learned Counsel on

an unreported decision in Crl. R. P. No. 263 of 1975, State of Kerala v. Mathai Verghese, on the file of the Kerala High Court. P. Janaki Amma, J., took the following view:

The dollar is the unit employed in the United States in calculating money values. It forms currency of that country. Dollar notes are bills issued by that Government guaranteeing the payment of money in the currency of the country. There is no case that they are in the nature of Bank notes. Therefore in the absence of an explanation similar to that in the case of bank notes, Section 489-A and the sections that follow which relate to counterfeiting of currency notes do not apply to cases of counterfeiting of dollar bills.

With respect to the learned Judge, I am unable to agree with her for the simple reason that Section 489-C makes reference to any forged or counterfeit currency notes. It is no doubt that Explanation to Section 489-A shows that for the purposes of Sections 489-A to E, the expression 'bank notes' means a promissory note or engagement for the payment of money to bearer on demand issued by any person carrying on the business of banking in any part of the world, or issued by or under the authority of any State or Sovereign Power, and intended to be used as equivalent to, or as a substitute for money. The absence of such an explanation to Section 489-C, I.P.C. would indicate that the expression 'any currency notes' is not restricted to Indian currency notes alone. In the absence of any words restricting the currency notes only of Indian currency, the words 'any currency' would, in my view, include the dollar bills also. I am, therefore, of the view that the contention that Section 489-C will not apply to American Dollar bills is not well founded.

8. Mr. Damodaran, learned Counsel, prayed that a lenient view on the question of sentence may be taken as the matter was pending from 1972 and as the first accused is now aged nearly 60 years and is the sole breadwinner of the family. Having regard to those facts, I am of the view that the sentence of rigorous imprisonment for two years will meet the ends of justice. The conviction is confirmed and the sentence of imprisonment is reduced from three years to rigorous imprisonment for two years. Except for this modification in the sentence, the revision in other respects fails and is dismissed.

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