(2022) 11 TEL CK 0006

In the Telangana High Court

Case No : Criminal Revision Case Nos. 1959 Of 2006, 201 Of 2007

Nariga Raj Kumar APPELLANT

Vs

State Of A.P. RESPONDENT

Date of Decision : 04-11-2022

Acts Referred:
Indian Penal Code, 1860 — Section 28, 394, 489A, 489C, 489D, 489E

Citation : (2022) 11 TEL CK 0006

Hon'ble Judges : Juvvadi Sridevi, J

Bench : Single Bench

Advocate : A Dattanand

Final Decision : Allowed

Judgement

1. Since both these Criminal Revision Cases arise out of the same judgment, they are taken up together and are being disposed of by this common order.

2. Crl.R.C.No.1959 of 2006 is filed by the petitioners/A3 and A4 and Crl.R.C.No.201 of 2007 is filed by the petitioner/A1, challenging the judgment, dated 17.11.2006, passed in Criminal Appeal Nos.25 and 26 of 2005 by the II Additional Sessions Judge at Warangal, whereby, the judgment, dated 09.03.2005, passed in S.C.No.665 of 2003 by the I Additional Assistant Sessions Judge, Warangal, convicting the petitioners/A1, A3 and A4 of the offence under Section 489-A IPC, 489-C IPC and 489-D IPC and sentencing them to undergo rigorous imprisonment for a period of five years each and to pay fine of Rs.500/- each under each count, in default, to undergo rigorous imprisonment for one month each under each count, was confirmed.

3. I have heard the submissions of Sri A.Dattanand, learned counsel for the petitioner in Crl.R.C.No.1959 of 2006, Sri Naraparaju Avinash, learned counsel for the petitioner in Crl.R.C.No.201 of 2007 and the learned Assistant Public Prosecutor appearing for the respondent/State in both these Criminal Revision Cases. I have perused the record.

4. For convenience of discussion, the parties would be hereinafter referred as per their array before the trial Court.

5. The case of the prosecution, in brief, is that on 26.05.2003 the complainant Md.Qamruddin, S.I. of Police, Matwada (LW.1) along with other Police Personnal namely, H.C.No.843 and Police Constables 1063, 2703, 1031 and 732 (LWs.2 to 4) was conducting vehicles check near Mulugu Cross road, Warangal. At about 09.00 A.M. Accused Nos.1 to 4 came in one Maruthi Van bearing No.AP 15 8600. On suspicion they were stopped and the van was checked. The said Sub Inspector of Police interrogated Accused Nos.1 to 4 in the presence of two panchas R.Sambaiah and P.Sharath (LWs.7 and 8) individually and separately. Accused Nos.1 to 4 revealed their names and confessed that they prepared counterfeit currency notes through a printer and brought the currency notes for exchange in market in Warangal. In pursuance of confession of Accused Nos.1 to 4, one bundle of rupees one thousand denomination counterfeit currency (Xerox) notes and one printer and said van from the possession of Accused No.1, one hundred fake notes 108 in number from the possession of Accused No.2, 72 fake notes of rupees one thousand from the possession of Accused No.3 and 38 fake notes of rupees one thousand from the possession of Accused No.4 were seized under panchanama before said panchas. Accused No.1 also confessed that he gave three fake notes of Rs.50/- and three fake notes of Rs.100/- to Accused No.6.

Later the said Sub Inspector of Police returned to P.S. Matwada and lodged a report before Station House Officer, Matwada and handed over the accused and said property for further action. Thereupon, a case was registered by Head Constable 1190 (LW.11). Further investigation was taken up by Circle Inspector of Police, C.C.S. Warangal (LW-12). The Circle Inspector of Police has effected the arrest of Accused Nos.1 to 4, examined the witnesses and sent Accused Nos.1 to 4 to Court for judicial custody. On 02.06.2003 Accused Nos.5 and 6 were arrested in Cr.No.119 of 2002 under Section 394 IPC of Intezargunj P.S. In pursuance of their confession recorded in the presence of A.Srinivas and K.Chandramouli (LWs.9 and 10), 17 fake notes of Rs. 1,000/- denomination from Accused No.5 and 24 fake notes of Rs.100/- denomination from possession of Accused No.6 were seized. Later Accused Nos.5 and 6 were remanded to judicial custody in this case on P.T. Warrants. The seized counterfeit notes were sent to F.S.L. through the Court. The Assistant Director, F.S.L., Hyderabad examined the notes and opined that item Nos.1 to 3 are counterfeit notes of Rs.1,000/-, Rs.100/-and Rs.50/- vide is report dated 24.06.2003 and item Nos.1 and 2 are counterfeit notes of rupees one thousand and rupees hundred notes vide another report, dated 04.07.2003. Hence, the charge.

6. The learned Magistrate took cognizance against A1 to A6 for the offence punishable under Sections 489-A, 489-C and 489-D IPC. To prove the guilt of the accused, the prosecution examined P.Ws.1 to 8 and got marked Exs.P.1 to P.14 and M.Os.1 to 8. On behalf of the accused, no evidence, either oral or

documentary, has been adduced.

7. The trial Court, after analysing the entire evidence on record, while acquitting A5 and A6 of the offence punishable under Sections 489-A, 489-C and 489-D IPC, found A1, A3 and A4 guilty of the said offences and accordingly, convicted and sentenced them as stated supra. Aggrieved thereby, A1, A3 and A4 preferred the subject Criminal Appeal Nos.25 of 2005 and 26 of 2005 before the Court below. The Court below, after re-appreciating the entire material available on record, dismissed the appeal, by confirming the judgment passed by the trial Court. Aggrieved by the same, A1, A3 and A4 preferred both these Criminal Revision Cases. Since A2 jumped the bail, the case against A2 was separated and numbered as S.C.No.68 of 2005 by the learned Principal Sessions Judge, Warangal. A1, A3 to A6 have faced the trial before the trial Court.

8. The learned counsel for the petitioners/A1, A3 and A4 would submit that both the Courts below erred in properly appreciating the evidence on record and erred in disallowing the plea taken by petitioners as to how the vehicle involved in the crime would prove their involvement in the subject offence. Learned counsel for the petitioners submitted that the Courts below ought not to have formulated a view that existence of a Xerox machine as material object would make liable the petitioners to be tried for the offences complained and the conviction under this case solely rest on extra judicial confessions which are in admissible in evidence, over looking that fact which is axiomatic in this case court of appeal hackenedly confirms it. Learned counsel for the petitioners further would submit that the courts below ought to have extended benefit of doubt to petitioners and discharged them, as witnesses never chose to speak anything against them. The learned counsel for the petitioners would submit that the courts below ought to have seen that except the police officials PWs.1, 2, 7 and 8 the independent panch witnesses PWs.3 to 6 did not state anything supporting the case of prosecution, therefore relying on the testimony of the police officials is not safe and proper. It is further submitted that the Courts below ought to have seen that the panchanamas Exs.P1 to P4 relating to Accused No.1 did not contain signatures of the Accused No.1, if the accused No.1 was arrested and property as alleged was seized from him, PW1 ought to have obtained their signatures on confession and recovery panchanamas relating to the accused No.1. Both the Courts below ought to have appreciated that when no signatures of the accused No.1 were taken on his panchanamas and confession, no credibility is to be given to those exhibits and that since no signatures of the Accused Nos.1, 3 and 4 were contained on Ex.P1, P3 and P4, the case of the prosecution ought to have been discarded. Both the Courts below erroneously convicted the petitioners/A1, A3 and A4 of the offence alleged against them. It is a fit case to extend benefit of doubt to the petitioners/A1, A3 and A4 and acquit them of the offence alleged against them and ultimately prayed to allow the Criminal Revision Cases as prayed for.

9. On the other hand, the learned Assistant Public Prosecutor supported the

judgments impugned in these Criminal Revision Cases and contended that there are no circumstances to interfere with the impugned judgment. There are no procedural irregularities in launching prosecution against the petitioners/A1, A3 and A4. The evidence placed on record clinchingly proves the guilt of the petitioners/A1, A3 and A4 beyond all reasonable doubt for the offences alleged against them. Hence, the trial Court was justified in convicting and sentencing the petitioners/A1, A3 and A4, which was rightly confirmed by the Court below. Both these Criminal Revision Cases are devoid of merit and are liable to be dismissed and ultimately prayed to dismiss the Criminal Revision Cases.

10. In view of the above submissions, the point that arises for determination in these two Criminal Revision Cases is as follows:

“Whether the impugned judgment, dated 17.11.2006, passed in Criminal Appeal Nos.25 of 2005 and 26 of 2005 by the II Additional Sessions Judge at Warangal, convicting and sentencing the petitioners/A1, A3 and A4 of the offence under Section 489-A IPC, 489-C IPC and 489-D IPC is legally sustainable?”

POINT:-

Before proceeding further, it would be appropriate to refer to Sections 489-A, C and D, which reads as under:-

"489A- Counterfeiting currency notes or bank notes: Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any currency note or bank note shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

Explanation: For the purposes of this section and of sections 489B, 489C, 489D and 489E the expression 'bank note' 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 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.

489C- Possession of forged or counterfeit currency notes or bank notes-Whoever has in his possession any forged or counterfeit currency note or bank note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years or with fine or with both.

489D- Making or possessing instruments or materials for forging or counterfeiting currency notes or bank notes- Whoever makes, or performs, any part of the process of making, or buys or sells or disposes of, or has in his possession any machinery, instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for forging or counterfeiting any currency note or bank note, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

The expression 'counterfeit' is defined in Section 28 IPC. The same reads as follows:

"28-Counterfeit: A person is said to 'counterfeit' who causes one thing to resemble another thing, intended by means of that resemblance to practice deception, or knowing it to be likely that deception will thereby be practiced.

Explanation 1: It is not essential to counterfeiting that the imitation should be exact.

Explanation 2: When a person causes one thing to resemble another thing, and the resemblance is that a person might be deceived thereby, it shall be presumed until the contrary is proved, that the person so causing the one thing to resemble the other thing intended by means of that resemblance to practice deception or knew it to be likely that deception would thereby be practiced."

Sections 489 A to 489 E deal with various economic offences in respect of forged or counterfeit currency notes or bank notes. The object of legislature in enacting these provisions is not only to protect the economy of the country but also to provide adequate protection to currency notes and bank notes.

Section 489-A not only deals with complete act of counterfeiting but also covers the case where the accused performs any part of the process of counterfeiting. Therefore, if the material shows that the accused knowingly performed any part of the process of counterfeiting, Section 489A becomes applicable.

Similarly Section 489 B relates to using as genuine forged or counterfeited currency notes or bank notes. The object of Legislature in enacting this section is to stop the circulation of forged notes by punishing all persons who knowing or having reason to believe the same to be forged do any act which could lead to their circulation.

Section 489C dealt with possession of forged or counterfeit currency notes or bank notes. It makes possession of forged and counterfeited currency notes or bank notes punishable. Possession and knowledge that the currency notes were counterfeited notes are necessary ingredients to constitute offence under Section 489 C and 489 D.

11. On perusal of the material available on record, only basing on the evidence of police officials who were cited as PWs.1, 2, 7 and 8, all the other independent panch witnesses, who are crucial to support the case of the prosecution have turned hostile and did not support the case of the prosecution. PW6, who is the independent panch witness, stated that he was called by the police to act as a witness for handing over gold ornaments to one Kumara Swamy which were recovered by the police after theft and he further stated that the police obtained his signatures on white papers and PWs.3 and 4, who have turned hostile, also

deposed that the police have taken their signatures on white papers and further stated that they have not signed on Ex.P1 to P9 and further the prosecution failed to examine the crucial witness who has given the report which is fatal to the case of the prosecution. In the absence of any positive evidence and to secure the ends of justice, the conviction and sentence imposed against the petitioners/A1, A3 and A4 for the offences alleged against them are liable to be set aside.

12. For these reasons, both these Criminal Revision Cases are allowed. The conviction and sentence recorded against the petitioners/A1, A3 and A4 under Section 489-A IPC, 489-C IPC and 489-D IPC, vide judgment, dated 09.03.2005, passed in S.C.No.665 of 2003 by the I Additional Assistant Sessions Judge, Warangal, and confirmed by the Court below vide judgment dated 17.11.2006, passed in Criminal Appeal Nos.25 of 2005 and 26 of 2005 by the II Additional Sessions Judge at Warangal, are hereby set aside. The bail bonds of the petitioners/A1, A3 and A4 shall stand cancelled and the fine amount, if any, paid by them shall be refunded to them.

Miscellaneous petitions, if any, pending in both these Criminal Revision Cases, shall stand closed.