

State of Kerala

Vs

Mathai Verghese and Others

Criminal Appeal No. 26 of 1978

(M. P. Thakkr, S. Natarajan JJ)

19.11.1986

JUDGMENT

THAKKAR, J. -

1. Counterfeiters all over the world must be singing in ecstasy : "if there is heaven on earth, it is here, here, here", for, according to the Kerala High Court [Judgment and order rendered by the Kerala High Court in Cr.R.P. 263 of 1975 on November 17, 1976, giving rise to the present appeal by certificate of fitness under Article 134(1)(c) of the Constitution of India], Indian law does not make counterfeiting of currency notes of any country in the world, other than that of India, an offence.

2. The High Court has persuaded itself by a process of judicial activism in reverse gear, that making of such counterfeit notes is not an offence under Section 489-A of the Indian Penal Code (IPC) and that having in possession such counterfeit currency notes is not an offence under Section 489-C of the IPC. Such a view has been taken even though there is nothing in the language of these sections to warrant such an interpretation as will become evident presently.

3. Facts : The six respondents herein were charged with offences punishable under Sections 120-B, 489-A, 489-B and Section 420 read with Sections 511 and 34 IPC. The prosecution case against them was that in furtherance of a conspiracy entered into by accused 1 to 4 to forge and counterfeit American dollar notes of 20 dollar denomination, they indulged in counterfeiting by printing 2000 such notes. Respondents 1 and 2 were further alleged to have been in possession of 148 forged currency notes knowing the same to be forged, with intent to use these forged notes as genuine. The respondents were committed by the magistrate to stand their trial before the Sessions Court, for offences under Section 120-B, 489-A and 489-C read with Sections 511 and 34 IPC. It was contended by the respondents-accused before the Sessions Court that a charge under Sections 489-A and 489-C of the IPC could be lawfully levelled only in the case of counterfeiting of 'Indian' currency notes and not in the case of counterfeiting of 'foreign' currency notes. The contention was upheld by the Sessions Court at the threshold of the trial and the accused were discharged. Aggrieved by the order of the Sessions Court discharging the respondents, the petitioner (State of Kerala) filed a revision petition before the High Court of Kerala. The High Court by its order under appeal confirmed the order of discharge rendered by the Sessions Court holding that "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". The petitioner thereupon filed an application under Article 134(1)(c) of the Constitution of India for leave to appeal to the Supreme Court. By its order under appeal, the High Court certified it as a fit case for appeal to the Supreme Court as "the case involves considerably

important questions of law as to whether counterfeit American dollar notes will fall within the purview of Sections 489-A and 489-C of the Indian Penal Code". That is how the matter has come up before this Court.

4. Relevant provisions. - The anatomy of the relevant provisions requires to be X-rayed at the outset. The concerned provisions may therefore be screened :

489-A. - Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any currency note or bank note, shall be punished with [Subs. by Act 26 of 1955, Section 117 and Sch. for "transportation for life" (w.e.f. January 1, 1956)] (imprisonment for life), or with imprisonment of either description for a term which may extend to ten years, and shall be liable to fine.

Explanation. - For the purposes of this Section and of Sections 489-B, [Subs. by Act 35 of 1950, Section 3 and Sch. II for "489-C and 489-D"] (489-C, 489-D and 489-E) 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 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.

489-C. 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.

5. Analysis. - An analysis of Section 489-A reveals that :

(i) counterfeiting 'any' currency note or bank note is an offence;

(ii) knowingly performing any part of the process of counterfeiting any currency note or bank note is also an offence; and

(iii) the prohibition against counterfeiting or performing such process applies to currency notes as also to bank notes as defined by the explanation to Section 489-A. And inasmuch as the aforesaid explanation inter alia means any engagement [A promise, obligation or other condition that binds (see Collins English Dictionary)] for the payment of money to the bearer issued by or under the authority of any State or sovereign power provided it is intended to be used as equivalent to or substitute for money the prohibition also extends to counterfeiting etc. of currency notes of any other sovereign power.

6. Outcome. - This analysis reveals that the legislative embargo against counterfeiting envelopes and takes within its sweep 'currency notes' of all countries. The embargo is not restricted to 'Indian' currency notes. The legislature could have, but has not, employed the expression 'Indian currency note'. If the legislative intent was to restrict the parameters of prohibition to 'Indian currency' only, the legislature could have said so unhesitatingly. The expression 'currency note' is large enough in its amplitude to cover the currency notes of 'any' country. When the legislature does not speak of currency notes of India the court interpreting the relevant provision of law cannot substitute the expression 'Indian currency note' in place of the expression 'currency note' as has been done by the High Court. The High Court cannot do so for, the court can merely interpret the section; it cannot

re-write, recast or redesign the section. In interpreting the provision the exercise undertaken by the court is to make explicit the intention of the legislature which enacted the legislation. It is not for the court to reframe the legislation for the very good reason that the powers to 'legislate' have not been conferred on the court. When the expression 'currency note' is interpreted to mean 'Indian currency note', the width of the expression is being narrowed down or cut down. Apart from the fact that the court does not possess any such power, what is the purpose to be achieved by doing so ? A court can make a purposeful interpretation so as to 'effectuate' the intention of the legislature and not a purposeless one in order to 'defeat' the intention of the legislators wholly or in part. When the court (apparently in the course of an exercise in interpretation) shrinks the content of the expression 'currency note', to make it referable to only 'Indian currency note', it is defeating the intention of the legislature partly inasmuch as the court makes it lawful to counterfeit notes other than Indian currency notes. The manifest purpose of the provision is that the citizens should be protected from being deceived or cheated. The citizens deal with and transact business with each other through the medium of currency [Currency n. 1 a metal or paper medium of exchange that is in current use. (Collins English Dictionary)] (which expression includes coins as also paper currency that is to say currency notes). It is inconceivable why the legislature should be anxious to protect citizens from being deceived or cheated only in respect of Indian currency notes and not in respect of currency notes issued by others sovereign powers. The purpose of the legislation appears to be ensure that a person accepting a currency note is given a genuine currency which can be exchanged for goods or services and not a worthless piece of paper which will bring him nothing in return, it being a counterfeit or a forged currency note. Would the legislature in its wisdom and anxiety to protect the unwary citizens extend immunity from being cheated in relation to Indian currency notes but show total unconcern in regard to their being cheated in respect of currency notes issued by any foreign State or sovereign power ? In the modern age a tourist from a foreign country may bring from his own country into India currency to the extent permissible under the law in India. So also he may obtain foreign currency in exchange of Indian currency whilst in India provided he does so to the extent permissible by the Foreign Exchange Regulation Act, 1973 [Section 13(1). - The Central Government may, by notification in the Official Gazette, order that, subject to such exemption, if any, as may be specified in the notification, no person shall, except with the general or special permission of the Reserve Bank and on payment of the fee, if any, prescribed, bring or send into India any gold or silver or any foreign exchange, or any Indian currency.

Explanation. - For the purposes of this sub-section, the bringing or sending into any port or place in India of any such article as aforesaid intended to be taken out of India without being removed from the ship or conveyance in which it is being carried shall nonetheless be deemed to be a bringing, or, as the case may be, sending, into India of that article.

(2) No person shall, except with the general or special permission of the Reserve Bank or the written permission of a person authorised in this behalf by the Reserve Bank, take or send out of India any gold, jewellery or precious stones or Indian currency or foreign exchange other than foreign exchange obtained by him from an authorised dealer or from a money-changer.] and operates through an authorised person [Section 6(1). - The Reserve Bank may, on an application made to it in this behalf, authorise any person to deal in foreign exchange.

(2) An authorisation under this section shall be in writing and -

(i) may authorise dealings in all foreign currencies or may be restricted to authorising dealings in specified foreign currencies only;

(ii) may authorise transactions of all descriptions in foreign currencies or may be restricted to authorising specified transactions only;

(iii) may be granted to be effective for a specified period, or within specified amounts;

(iv) may be granted subject to such conditions as may be specified therein.

(3) Any authorisation granted under sub-section (1) may be revoked by the Reserve Bank at any time if the Reserve Bank is satisfied that, -

(i) it is in the public interest to do so; or

(ii) the authorised dealer has not complied with the conditions subject to which the authorisation was granted or has contravened any of the provisions of this Act or of any rule, notification, direction or order made thereunder :

Provided that no such authorisation shall be revoked on the ground specified in clause (ii) unless the authorised dealer has been given a reasonable opportunity for making a representation in the matter.

(4) An authorised dealer shall, in all his dealings in foreign exchange and in the exercise and discharge of the powers and of the functions delegated to him under Section 74, comply with such general or special directions or instructions as the Reserve Bank may, from time to time, think fit to give, and except with the previous permission of the Reserve Bank, an authorised dealer shall not engage in any transaction involving any foreign exchange which is not in conformity with the terms of his authorisation under this section.

(5) An authorised dealer shall, before undertaking any transaction in foreign exchange on behalf of any person, require that person to make such declarations and to give such information as will reasonably satisfy him that the transaction will not involve, and is not designed for the purpose of, any contravention or evasion of the provisions of this Act or of any rule, notification, direction or order made thereunder, and where the said person refuses to comply with any such requirement or makes only unsatisfactory compliance therewith, the authorised dealer shall refuse to undertake the transaction and shall, if he has reason to believe that any such contravention or evasion as aforesaid is contemplated by the person, report the matter to the Reserve Bank.] known as money changer. [Section 7(1). - The Reserve Bank may, on an application made to it in this behalf, authorise any person to deal in foreign currency.

(2) An authorisation under this section shall be in writing and -

(i) may authorise dealings in all foreign currencies or may be restricted to authorising dealings in specified foreign currencies only;

(ii) may authorise transactions of all descriptions in foreign currencies or may be restricted to authorising specified transactions only;

(iii) may be granted with respect to a particular place where alone the money-changer

shall carry on his business;

(iv) may be granted to be effective for a specified period, or within specified amounts;

(v) may be granted subject to such conditions as may be specified therein.

(3) Any authorisation granted under sub-section (1) may be revoked by the Reserve Bank at any time if the Reserve Bank is satisfied that -

(i) it is in the public interest to do so; or

(ii) the money-changer has not complied with the conditions subject to which the authorisation was granted or has contravened any of the provisions of this Act or of any rule, notification, direction or order made thereunder :

Provided that no such authorisation shall be revoked on the ground specified in clause (ii) unless the money-changer has been given a reasonable opportunity for making a representation in the matter.

(4) The provisions of sub-sections (4) and (5) of Section 6 shall, insofar as they are applicable, apply in relation to a money-changer as they apply in relation to an authorised dealer.

Explanation. - In this section, "foreign currency" means foreign currency in the form of notes, coins or traveller's cheques and "dealing" means purchasing foreign currency in the form of notes, coins or traveller's cheques or selling foreign currency in the form of notes or coins]. Would it be reasonable to assume that the legislature was totally oblivious of the need to protect them from being deceived and defrauded ? It would be unwise to do so in the face of the internal evidence which provides a clue to the legislative anxiety on this score. In fact the framers of the Code were so anxious to protect the general public from fraudulent acts of counterfeiters that not only have they defined the word "counterfeit" in very wide terms in the Indian Penal Code, but they have also prescribed a rule of evidence in Explanation 2 so as to draw an adverse presumption against the maker of the counterfeit article, as is evident from the definition of the term "counterfeit" read with the Explanations in Section 28 of the Indian Penal Code. [28. A person is said to "counterfeit" who causes one thing to resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised.

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 such 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 practise deception or knew it to be likely that deception would thereby be practised.]

7. What is more, the expression 'bank note' employed in Sections 489-A to 489-E of Indian Penal Code takes within its sweep an engagement for the payment of money issued by or under the authority of any State or sovereign power as is evident from the analysis of the section made hereinabove. And it would therefore cover a dollar bill or dollar note as well. A dollar bill issued by the sovereign government of United States of America would ipso facto be covered by the

expression 'bank note'. And as revealed by the analysis made earlier to the counterfeiting of a bank note or being in possession of a counterfeit bank note as well. It would, therefore, in any case, be an offence to counterfeit a dollar bill or to be in possession of a counterfeit dollar bill.

8. Why then construe the expression 'currency note' as being applicable only to an Indian currency note and not to a foreign currency note like a dollar bill ? There is neither any compulsion of law nor of logic for indulging in the exercise undertaken by the High Court which in the opening part of the judgment has been adverted to as 'judicial activism in reversed gear'. Nor was any ideal to be attained by doing so. Why then stretch the unstretchable ? It appears that the High Court lost its way whilst groping in the dark by a possibly misconceived and ill-founded argument [Says the High Court : "The omission of an explanation in Section 489-A for the expression 'currency note' similar to the one for 'bank note' thus assumes importance. The expression could refer only to the currency notes issued by the Government of India."] built on the circumstance that whilst the explanation to Section 489-A in terms refers to a bank note issued 'under the authority of any State or sovereign power' a similar explanation is not added in the context of the expression 'currency note'. The High Court overlooked the fact that there was neither any occasion, nor any reason, nor any need, for doing so. For, the expression 'currency note' as it stood was wide and pervasive enough to embrace the currency notes issued by India as also currency notes issued by any other country in the world. There was therefore no need to add a similar explanation. It would have been futile to amplify that expression 'currency note' which on a plain reading covers 'all' currency notes meant what it said. To read the expression 'any currency note' to mean and refer to 'Indian currency note' is to misread the expression by doing violence both to the letter and spirit thereof unmindful of the fact that the former expression in its plenitude covers the currency notes issued by any and every country of the world whereas the latter is applicable to only one of the countries in the world. The High Court also fell in error in being influenced by the definition of currency notes embodied in the Indian Paper Currency Act (Act 20 of 1822). The High Court has overlooked the obvious fact that definition contained in Section 2 of the said Act is only for the purposes of that particular Act and it cannot be imported into Sections 489-A to 489-E of the Indian Penal Code, as has been done by the High Court [Says the High Court : "The expression 'currency notes' in Section 489-A to 489-E should naturally refer to currency notes as defined in Act XX of 1822."].

9. The High Court was thus wholly wrong in exerting itself unnecessarily and bending backwards in order to hold that Section 489-A to 489-E are not applicable to currency notes other than Indian currency notes; and in holding that counterfeiting of or possessing of counterfeit dollar bills or dollar notes is not an offence under the Indian law, thereby issuing a carte blanche to the counterfeiters of the world to establish their headquarters within the State of Kerala with a view to carry on their activities with impunity under the umbrella unwittingly opened for them by the judgment of the High Court.

10. The view taken by the High Court is thus thoroughly unsustainable. The judgment and order of discharge rendered by the High Court are therefore reversed and set aside. The matter will now go back to the trial court for proceeding further in accordance with law in the light of the observations made hereinabove. Appeal is accordingly allowed to this extent.

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