



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONURABLE MR. JUSTICE JOHNSON JOHN

WEDNESDAY, THE 5TH DAY OF NOVEMBER 2025 / 14TH KARTHIKA, 1947

CRL.A NO. 318 OF 2009

AGAINST THE JUDGMENT DATED 04.02.2009 IN SC NO.929 OF
2008 OF I ADDITIONAL DISTRICT COURT & I ADDITIONAL MOTOR
ACCIDENT CLAIMS TRIBUNAL / RENT CONTROL APPELLATE AUTHORITY,
KOLLAM

APPELLANT/ACCUSED:

ABDUL HAKKIM
S/O ABDUL RAHIMAN,
TC 35/465, VALLAKADAVU, VAYYAMOOLA MURI,,
PALKULANGARA VILLAGE.

BY ADV SHRI.THAREEQ ANVER

RESPONDENT/COMPLAINANT:

STATE OF KERALA
DETECTIVE INSPECTOR, CBCID, RURAL RESIDENCY,,
TRIVANDRUM.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
03.11.2025, THE COURT ON 05.11.2025 DELIVERED THE
FOLLOWING:



'C.R'

JOHNSON JOHN, J.

Crl. Appeal No. 318 of 2009

Dated this the 5th day of October, 2025

J U D G M E N T

The appellant is the accused in S.C. No. 929 of 2008 on the file of the First Additional Sessions Judge, Kollam and he is challenging the conviction and sentence imposed on him for the offence under Section 489C IPC.

2. The Detective Inspector of C.B.C.I.D, Thiruvananthapuram charge sheeted the accused for the offence under Section 489C IPC. The prosecution case is that on 04.08.1987, at about 10.20 p.m., the accused was found in possession of one counterfeit 100 Dollar bill and attempting to exchange it as a genuine one at the public road near Thiruvananthapuram airport by the Sub Inspector of Valiyathura Police Station.



3. After committal, the trial court framed charge against the accused under Section 489C IPC and when the charge was read over and explained to the accused, he pleaded not guilty.

4. Thereafter, the prosecution examined PWs 1 to 3 and marked Exhibits P1 to P7 and MO1 to prove the charge against the accused. No evidence was adduced from the side of the accused. After hearing both sides and considering the oral and documentary evidence on record, the learned Additional Sessions Judge found the accused guilty of the offence under Section 489C IPC and sentenced him to undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/- and in default of payment of fine, to undergo simple imprisonment for three months.

5. Heard Sri. Thareeq Anver, the learned State Brief representing the appellant and Smt. Hasnamol N.S., the learned Public Prosecutor.

6. The learned State Brief representing the appellant argued that there is no evidence in this case to show that the accused was having knowledge that MO1 is a counterfeit Dollar bill and there is also no



evidence to show that he made any attempt to exchange MO1 as a genuine one. But, the learned Public Prosecutor argued that the evidence of PW3, Sub Inspector, and Exhibit P7 report would clearly show that the accused attempted to exchange MO1, counterfeit Dollar bill, with the knowledge that it is a counterfeit currency note.

7. The learned State Brief representing the appellant fairly conceded that Section 489C IPC is not restricted to Indian currency note alone; but, it includes Dollar also and it applies to American Dollar bills.

In ***K. Hasim v. State of T.N*** [AIR 2005 SC 128], it was held as follows:

“43. Section 489C deals 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 Sections 489C and 489D. As was observed by this Court in *State of Kerala v. Mathai Verghese and Ors.* (AIR 1987 SC 33) the expression 'currency notes' is large and wide enough in its amplitude to cover the currency notes of any country. Section 489C is not restricted to Indian currency note alone but it includes dollar also and it applies to American dollar bills.)”



8. To attract the offence under Section 489C of IPC, the prosecution has to establish that the accused was in possession of the counterfeit 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. So, the pertinent question is whether there is evidence to show that the accused was having the knowledge or reason to believe that MO1 is a counterfeit Dollar at the time of the alleged occurrence.

9. When the accused was questioned under Section 313 Cr.P.C., he stated that he is a headload worker at Thiruvananthapuram airport and when foreigners reach there in groups, the headload workers used to carry their luggage to the bus and on the date of occurrence, he, along with four other headload workers, loaded the luggage of a group of foreigners to a tourist bus and the said foreigners handed over a 100 Dollar bill to him towards the loading charges and subsequently, when they examined the Dollar note after the tourist left the place, it was found that the middle portion of the Dollar bill was torn and pasted and



thereupon, the other four headload workers started a quarrel with the accused and it was at that time, the Sub Inspector came there in a jeep and took them to the Police Station. According to the accused, the other headload workers were released and he was falsely implicated in this case.

10. In Exhibit P1 mahazar, it is stated that when the Sub Inspector and party reached the public road in front of Thiruvananthapuram airport, they saw two persons quarrelling in connection with the exchange of an American 100 Dollar note and the accused told the Sub Inspector that the other person who quarrelled with him is one Varghese.

11. PW1, Varghese, deposed that he is an auto driver; but, he turned hostile to the prosecution and stated that the accused is not known to him and he has no knowledge regarding the alleged occurrence. PW1 denied making statement to the police as per Exhibit P2 series.



12. In Exhibit P1 mahazar, it is stated that the Sub Inspector approached the Manager of the State Bank of Travancore to ascertain the genuineness of the Dollar note and after examination, the Manager of the Bank confirmed that it is a counterfeit dollar and thereafter, the accused was arrested.

13. The learned State Brief representing the appellant pointed out that in Exhibit P4 FIR, the name of the Manager of the said Bank is originally recorded as T.K. Ramakrishanan Nair and the same is scored out and in that place, it is recorded as Manager and the prosecution has not made any attempt to examine the said Manager in this case.

14. PW2 also turned hostile to the prosecution and stated that the accused is not known to him and he has not witnessed the alleged occurrence. PW2 denied making statement to the police as per Exhibit P3 series.

15. PW3 is the Sub Inspector who detected the offence. PW3 deposed that along with the Head Constable, he conducted night patrol duty on 04.08.1987 and when they reached near airport, they saw



people gathered there and on investigation, it is revealed that the accused who is in possession of a 100 Dollar American note attempted to exchange the same to one Varghese, and at that time, there occurred a verbal altercation between them for the reason that the said note is not a genuine one. According to PW3, along with the said persons, he proceeded to the State Bank of Travancore Branch near the airport terminal and there the note was examined by T.K. Ramakrishnan Nair, an officer working there, and he informed them that the note is not genuine and thereafter, they returned to the place of occurrence and prepared Exhibit P1 mahazar.

16. In cross examination, PW3 stated that when he reached the place of occurrence, the quarrel was relating to whether the Dollar was original or not. According to PW3, about 10 or 12 persons gathered there. He also admitted that the name T.K. Ramakrishan Nair is scored out in Exhibit P4 FIR and that the said T.K. Ramakrishnan Nair is not cited as a witness in this case. PW3 denied the suggestion that a foreigner has given the Dollar note to the accused in connection with the



work done by 5 or 6 persons together and subsequently, there occurred a quarrel between them for receiving the note without proper verification and it was at that time, the accused was taken to custody.

17. The learned State Brief pointed out that the trial court, without taking note of the fact that the place of occurrence is a public road near to the airport, recorded a finding that the accused, being a porter in the airport, was bound to produce the necessary document authorizing him to work as a porter in airport premises and it is not possible for every Tom, Dick, and Harry to enter the airport and work as a porter. Since the prosecution has no case that the occurrence was inside the airport or in a restricted area, I find force in the argument of the learned State Brief representing the appellant that the above observation of the trial court is not justifiable in the circumstances of the case, especially in view of the fact that the place of occurrence is a public road near to the airport.

18. The prosecution was not able to examine the Investigating Officer as he was no more at the time of trial. The only witness who



supported the prosecution case is PW3, Sub Inspector who detected the case. The evidence of PW3 in chief examination clearly shows that what he deposed in chief examination relating to the possession of the counterfeit Dollar note and the attempt of the accused to exchange the note to one Varghese is based on the information which he collected from the persons gathered there at the time of occurrence. In chief examination, PW3 stated as follows:

“patrol സഞ്ചരിച്ചു വരവെ Air Port ന്റെ side ൽ ആൾക്കൂട്ടം കണ്ട് ചെന്ന് നോക്കി. അന്വേഷിച്ചതിൽ ഒരു നൂറ് ഡോളർ അമേരിക്കൻ നോട്ട് കൈവശം വെച്ച് കാണപ്പെട്ട പ്രതിയെ (witness identifies the accused) കൂടെയുണ്ടായിരുന്ന വർഗ്ഗീസ് എന്ന ആൾക്ക് കൈയ്യുമാറ്റം ചെയ്യാൻ തുടങ്ങിയ സമയത്ത് അതു വ്യാജ ഡോളറാണെന്ന തർക്കത്തിൽ നിൽക്കുന്നതായി കാണപ്പെട്ടു. അപ്പോൾ സമയം 10 മണിയായി.

19. The trial court recorded a finding in paragraph 11 of the impugned judgment as follows:

“The prosecution is at a handicap since the investigating officer is no more and not available for examination. But PW3, who is acquainted with the signature and handwriting of CW5 has categorically given evidence that his as well as the statement of PW1



and 2 were recorded by CW5 in the handwriting of CW5 himself. The above evidence of PW3 stands unchallenged in cross examination. So the material contradictions in the previous statement of PW1 and 2 which were marked as Exts.P2 and P3 series stands proved through PW3., since official acts are presumed to be done in good faith unless proved otherwise. So this is also inconformity with the prosecution case.”

20. I find force in the argument of the learned State Brief representing the appellant that the trial court is not justified in using the portions of the 161 statement of PWs 1 and 2 as substantive evidence, in as much as Section 162 of Cr.P.C imposes a bar on the use of any statement made by any person to a police officer in the course of investigation at any enquiry or trial in respect of any offence under investigation at the time when such statement was made, except for the purpose of contradicting the witness in the manner provided under Section 145 of the Evidence Act.

21. As noticed earlier, when PWs 1 and 2 turned hostile, the relevant portions of case diary statements were read over to them and they were denied and therefore, the same are marked as Exhibits P2 and



P3 series. It is true that the statements recorded under Section 161 Cr.P.C could be used to show that the witness had given different versions: one before the police during the course of investigation; and another before the court to argue that the evidence of the said witnesses before the court cannot be relied upon; but under no circumstances, the statement given by the witness to the police during investigation could be used as substantive evidence, as held by the Honourable Supreme Court in **Hazari Lal v. State (Delhi Administration)** [(1980) 2 SCC 390], **Baldev Singh v. State of Punjab** [(1990) 4 SCC 692] and **Tahsildar Singh v. State of U.P** [1959 Cri LJ 1231]

22. In this case, the learned Sessions Judge totally disregarded the above legal position and placed reliance on the case diary statements to accept the prosecution case in violation of the mandate of Section 162 Cr.P.C.

23. It is well settled that simply because a counterfeit note is seized from the possession of the accused, the offence under Section 489C IPC will not be attracted. To attract the offence under Section



489C IPC, the prosecution has to establish that the accused was in possession of forged or counterfeit note with the intention to use the same as genuine or attempted to use the same as genuine. A perusal of the questions put to the accused under Section 313 of Cr.P.C., would show that no question indicating the conscious possession of the accused or his intention to use the note as genuine is seen put to the accused. In ***Anthru @ Abdurahiman v. State of Kerala*** [2020 (4) KHC 469], this Court held in paragraphs 19 and 20 as follows:

“19. Moreover, as per S.313 of Cr.P.C, in every inquiry or trial, any circumstances appearing in the evidence against an accused should be put to him for enabling him to explain the same. In this case, the Trial Court relied upon the evidence of PW8 and found that he is a petty shop owner, and he will be able to identify MO2 and MO3 as counterfeit notes. The Court also perused MO2 and MO3 and found that it is possible to distinguish the same from the real currency notes and that it did not require any expert opinion. According to the Trial Court, since the 1st accused is doing business in aracanut gardens on lease and for that purpose employed PW6, it can be presumed that there is reason to believe that the 1st accused is a person who used to deal with 100 rupee currency notes generally. In such a situation, according to the Trial



Court, the reasonable inference is that the first accused knew or at least have reason to believe that MO2 and MO3 are counterfeit currency notes. Whether such an inference can be the basis of conviction without putting the same to the accused under S.313 Cr.P.C is the question. The Apex Court in M. Mammutti's case (supra) clearly stated that, if any question regarding these circumstances is not put to the accused under S.342 Cr.P.C (the present S.313 Cr.P.C) that is fatal to the prosecution. Similarly, in Umashanker v. State of Chhattisgarh[2001 KHC 779 : AIR

2001 SC 3074 : 2001 (3) KLT 681 : 2001 (9) SCC 642 : 2001 CriLJ 4696], the Apex Court observed that if any specific question about the currency note being fake or counterfeit was not put to accused in examination under S.313 Cr.P.C, that is fatal to the prosecution. This Court considered the importance of examining the accused under S.313 Cr.P.C and the importance of the relevant questions to be put to the accused in Crl.A No.856/2005. The relevant portion of the judgment is extracted hereunder:

"28. In addition to this, another important aspect is that the compliance of S.42(2) of the NDPS Act is not put to the accused under S.313 Cr.P.C. I perused the S.313 Cr.P.C. statement of the accused. If the incriminating materials are not brought to the notice of the accused while examining them under S.313 Cr.P.C., the Court cannot use that part of the evidence to convict an accused. The Apex Court in Inspector of Customs, Akhnoor, Jammu and Kashmir v. Yashpal and another, 2009 (4) SCC 769 considered this point. Paragraph 13, 16 and 17 of the above said judgment is extracted herein below:



"13. It is to be noted that the High Court did not accept the stand relating to noncompliance with S.41(2) of the Act. It only interfered on the ground that the relevant incriminating materials were not put to the accused when they were being examined.

16. It is to be noted that in the instant case there was no reference to any of the incriminating materials. If the foundation of the prosecution case was the alleged confession before the Customs Authorities, that material was not brought to the notice of the accused persons.

17. Above being the position, there is no infirmity in the impugned judgment to warrant interference. The appeal is dismissed."

29. When the compliance of S.42(2) is an important evidence relied by the prosecution and if it is not put to the accused under S.313 Cr.P.C., the same cannot be relied by the Court to convict an accused."

20. In the light of the above judgments, it is clear that all the circumstances against the accused should be put to the accused under S.313 Cr.P.C enabling the accused to explain such circumstances. I have perused the 313 statement of the accused in this case. No question regarding the knowledge of the accused about the counterfeit notes, when the same was in his possession, was put to the accused under S.313 Cr.P.C. On that ground also, the accused is entitled to the benefit of doubt."

24. It is well settled that the evidential burden that lies on the prosecution is not discharged by the suggestions made to its witnesses in cross examination. The suggestions put in cross examination are no evidence at all against the accused and the prosecution cannot use them



to fill in the gap in the evidence of the prosecution. In the present case, the only witness who supported the prosecution case is PW3, Sub Inspector who detected the offence, and his evidence in chief examination itself indicates that what he disposed in chief examination is based on the information which he collected from the persons gathered there. The accused has got a specific case that he received the Dollar from some foreigners when they loaded the luggage in a tourist bus and that there occurred a quarrel between the accused and other porters when they noticed that the middle portion of the Dollar bill was torn and pasted.

25. The evidence of PW3, Sub Inspector, shows that he was also not sure whether the Dollar note was genuine or counterfeit and he approached the Manager of the State Bank of Travancore near the airport for verifying the genuineness of the note. PW3 has no case that the accused attempted to run away from the place and apart from MO1 Dollar note, no other contraband item was recovered from the possession of the accused and therefore, considering the entire facts and



circumstances of the case, I find that the appellant is entitled to the benefit of doubt.

In the result, this appeal is allowed and the conviction and sentence imposed by the trial court against the appellant/accused is set aside and he is acquitted of the offence under Section 489C of IPC. The bail bond executed by the appellant/accused shall stand cancelled and he is set at liberty forthwith.

Sd/-

**JOHNSON JOHN,
JUDGE.**

Rv