IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an appeal under and in terms of Section 331 of the Criminal Procedure Code Act No. 15 of 1979.

The Attorney General of the Democratic Socialist Republic of Sri Lanka.

Complainant

Court of Appeal
Case No. 282/2012

Vs,

Mohamed Aliyar Farook alias Gafoor.

Accused

And Now Between

Mohamed Aliyar Farook alias Gafoor.

Accused-Appellant

High Court of Batticaloa
Case No. 2453/2006

Vs,

The Attorney General of the Democratic Socialist Republic of Sri Lanka

Complainant-Respondent

Before : **S. Thurairaja PC, J &**
A.L. Shiran Gooneratne J

Counsel : Jagath Abenayaka Attorney-at-Law for the Accused-Appellant
P. Kumaratnam DSG for the Complainant- Respondent

Written Submissions : Accused Appellant – not filed.
Respondent – 22nd March 2018

Argument on : 6th August 2018

Judgment on : 28th September 2018

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Judgment

S. Thurairaja, PC. J

The Accused-Appellant Mohamed Aliyar Farook alias Gaffoor (Hereinafter sometimes referred to as the Appellant) was indicted before the High Court of Batticaloa under Section 478 (C) of the Penal Code for possessing of 243 forged/counterfeit notes of Rs. 500/- denomination of Sri Lankan currency.

The Appellant pleaded not guilty and proceeded with the trial. After the trial the Appellant was found guilty and sentenced to two years rigorous imprisonment and a fine of Rs.10,000/- in default six months imprisonment. Being aggrieved with the said conviction and sentence, preferred this appeal to the Court of Appeal.

It is with great reluctance we place on record that the Counsel for the Appellant had obtained several dates to file written submissions, on two occasions he informed Court that he is ready with the written submission and he will be filing it in the Registry within the cause of that date, but he never filed written submissions. Deputy Solicitor General filed written submissions on time.

The Counsel for the Appellant on the date of argument raised two grounds of appeal.

1. Prosecution failed to establish the chain of evidence.
2. The Learned Trial Judge had not sufficiently evaluated the evidence given by the defence.

The prosecution led the evidence of Inspector of Police Valikande Mudiyanselage Naleem Dammika Bandara Samarakone, Police Sergent Manik Bedigame Senaweera, Keerthy Dhammika Kumara Wijesinghe, Police Sergent Edirisinghe Hemalal Hemantha, Police Sergent Rohana Beenula Withanage Renuka Priyanthi, Police Sergent Aspandiya Sudanaralalage Ruwankumara Dassanayake and Sarath

Wijesinghe. When the case is closed for the prosecution defence called the Appellant and his wife gave evidence.

As per the prosecution, on the 5th March 2006, SI Samarakoon (as he then) was attached to Police Station of Kaththankudy received an information that the Appellant was possessing counterfeit currency. He gathered a team and organized a raid. They went in civvies in a van. When they went to the house of the Appellant he was there, when he identified them as police officers, grabbed the bag from the table and tried to escape through the rear door. He was apprehended and the bag was searched, there they found a milk powder tin under the trade name of "Anchor".

When they opened it they found 1395 grams of cannabis. Further they had found bundle of currency notes, when carefully inspected the police officer found the currency notes were thicker than the normal currency notes and one serial number *H 54 583748* in all notes. The police being convinced of the incorrectness of the currency notes they took the Appellant into custody. The currency notes initially produced to the Magistrate Court and referred to the Central Bank of Sri Lanka (CBSL) for verification. There the CBSL confirmed that these currency notes are counterfeit and issued a certificate to that effect.

Considering the first ground of appeal that failed to establish the chain of evidence. We carefully examined the evidence of witnesses, there we find the productions were kept under proper custody and referred to the CBSL without any interference. Accordingly, we find the finding of the High Court Judge regarding the chain of production is acceptable.

It is evidenced by the Trial Court that the bag and the cannabis were produced in a different case for a charge of possessing cannabis. After carefully considering all materials before the Learned Trial Judge and submissions before this Court that we find this ground of appeal fails on its own merits.

The next ground of appeal is that the Learned Trial Judge had not sufficiently evaluated the evidence given by the defence. The Judgment of the Learned Trial Judge contained in thirteen pages. There she had analysed the evidence for the prosecution and the defence. The evidence given by the accused and his wife summarized and analysed independently and rejected after carefully comparing and considering with the evidence of the prosecution. It is our view that the Learned Trial Judge has given due consideration to the evidence of the defence. Therefore, we find there is no merit in this ground of appeal.

Both grounds of appeal fails on its own merits accordingly we dismiss the appeal and affirm the conviction.

After the conviction the Learned Trial Judge had imposed two years rigorous imprisonment and a fine of Rs. 10,000/- in default six months imprisonment. Considering the offence possession of counterfeit currency is an offence which attack the veins of the economy. When there is war between countries, war between a terrorist group and the government one of the way to attack the opponent is to print or make counterfeit currency. This directly attacks the economy and make the stability of the economy of the country weak. Which intern causes, intolerable suffering on the public. This had been seen in far eastern and African countries.

In **Ravindra Kumar Agrahari vs Union of India** [decided on 15 December 1999] it was held that,

> *"Genuine currency is of vital importance to the human existence in a civilized society. Counterfeit currency is an antithesis of the economic order. Possession and circulation of counterfeit currency undoubtedly is an anti-social and anti-national activity. It poses serious threat to the economy and thereby to the security of nation. On account of such activities the economic health and growth of the nation is impeded. Such activities destabilise the national economy and are injurious to the economic development of the nation.*

The entire fiscal discipline of the country is bound to be disrupted and shattered, if counterfeit currency is floated in the market. By possessing and circulating the forged or counterfeit currency notes, using them as genuine, a crisis of confidence is generated as the credibility of the genuine national currency is shaken. People become shaky and are in the grip of fear while accepting even the genuine currency notes, lest they may not be deceived. The subversive activities affecting the economy of the country, at large, are prejudicial to the maintenance of 'public order'. Such a situation in the country is to be tackled in a most determined and effective way. To eliminate or at least minimise such activities, effective and firm action against those who are undermining and discrediting the foundation of our social and economic structure is required. The menace of the economic offenders came to be analysed by Apex Court in the case of ***Dwarka Prasad Sahu v. State of Bihar AIR 1975 SC 134 : (1975 Cri LJ 221)*** *as well as* ***Satva DevPrasad v. State of Bihar AIR 1975 SC 367 : (1975 Cri LJ 419)****. It was observed that economic offenders are a menace to the society and it is necessary in the interest of the economic well being of the community to mercilessly stamp out such pernicious, antisocial and highly reprehensible activities which are causing havoc to the economy of the country and inflicting untold hardships on the common man and the Court would, therefore, naturally be loath to interfere with an order of detention which is calculated to put an economic offender out of action by way of social defence."*

The Accused-Appellant possessing 243 high value denomination currencies cannot be treated as a mere incident nor just an offence. This should be considered very seriously. We invited both counsels to address us on the issue of appropriateness of sentence. The Appellant did not file written submissions but submitted the sentence is excessive. The Learned DSG filed written submissions and sought an enhancement of the sentence.

Section 478 (C) of the Penal Code reads as follows;

> *"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 twenty years or with fine or with both."*

As per the above section, the Court can impose a sentence upto 20 years or with fine or both. According to the Section 335(2) of the Code of Criminal Procedure Act No. 15 of 1979, which reads as follows.

> *"On an appeal against the sentence, whether passed after trial by jury or without jury, the Court of Appeal shall if it thinks that a different sentence should have been passed, quash the sentence, and pass other sentence warranted in law by the verdict whether more or less severe in substitution therefore as it thinks ought to have been passed...."*

In the case of **Attorney Genaral vs. H.N.de Silva 57 NLR 121,** it was held that,

> *"In assessing the punishment that should be passed on an offender, a judge should consider the matter of sentence both from the point of view of the public and the offender."*

In **King vs. Rankira (42 NLR 145)** held that,

> *"the Court of Appeal will not interfere with the judicial discretion of a judge in passing sentence unless that discretion has been exercised on a wrong principle."*

In **AG vs. Mendis [1995 (1) SLR 138]** held that,

> *" In assessing a punishment, the Judge should consider the matter of sentence both from the point of view of the public and the offender. The Judge should first consider the gravity of the offence as it appears from the nature of the act itself*

and should have regard to the punishment provided in the Penal Code or other Statute under which the offender is charged. He should also regard the effect of the punishment, as deterrent act and consider in what extent it will be effective."

Considering the facts of the case the sentence imposed is two years rigorous imprisonment and a fine of Rs. 10,000/- which in our view completely inadequate.

After carefully considering all circumstances we dismiss the appeal and vacate the sentence passed thereon and impose the following sentence. The Accused-Appellant is sentenced to 8 years rigorous imprisonment and a fine of Rs.121, 500/- in default 4 years rigorous imprisonment.

Registrar is hereby directed to issue committals on the Accused-Appellant. We further direct the registrar to remit the case record to the High Court of Battiacaloa.

Appeal Dismissed.

Sentence enhanced.

JUDGE OF THE COURT OF APPEAL

A.L. Shiran Gooneratne, J

I agree,

JUDGE OF THE COURT OF APPEAL