Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.808 OF 2010

Mehboob Ali & Anr. … Appellants

Vs.

State of Rajasthan … Respondent

[With Crl.A. No. 1088 of 2010]

SUPREME COURT OF INDIA

J U D G M E N T

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ARUN MISHRA, J.

1. The appeals have been preferred against the common judgment and order dated 28.5.2009 passed by the High Court of Judicature for Rajasthan, Jaipur Bench in Criminal Appeal Nos.39/2006 and 40/2006 and other connected matters, thereby upholding conviction and sentence of the appellants for commission of offence under section 489C for 3 years' RI, for section 489B read with section 120B IPC of IPC five years' RI and fine of Rs.1000/- each; in default to further

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undergo one month simple imprisonment. Appellants Mehboob Ali and Firoz were convicted and sentenced under section 489B read with section 120B IPC for 5 years' RI and fine of Rs.1,000/-; in default to suffer one month simple imprisonment. Other accused persons Liyakat Ali and Puran Mal were also convicted.

2. As per the prosecution case, on 6.1.2004 FIR No.459 of 2003 was registered at Police Station Ramganj, Jaipur in State of Rajasthan. From possession of accused Puran Mal, 5 currency notes of Rs.100 denomination were found. Three currency notes were of the same number. Remaining two currency notes also bore the same number which were apparently forged. He was arrested vide Memo P-6 and recovery memo P-7 was drawn. Case under section 489C read with section 120B IPC was registered. On interrogation Puran Mal informed that he had received the currency notes from Mehboob, Firoz and Ram Gopal. Mehboob and Firoz were arrested on information furnished by accused Puran Mal. From Ram Gopal's house currency notes worth Rs.41,900/- were recovered from the possession of Puran Mal. Mehboob and Firoz informed the Police that they have obtained the currency notes from Anju Ali, and they would identify Anju Ali. They were taken to Delhi. On identification made by them Anju Ali was

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arrested and fake currency notes of the value of Rs.1,75,000/- were recovered from his possession. Anju Ali in turn informed that he used to receive the currency notes from accused Majhar. On the information and identification of Anju Ali, Majhar was arrested and on his search, fake currency notes of the value of Rs.48,220/- were recovered. Majhar in turn informed that he used to receive fake currency notes from Liyakat Ali. Liyakat Ali was arrested and from his possession currency notes of the value of Rs.2,39,500/- were recovered. Some semi-made currency notes of Rs.500 denomination and equipments for fabricating notes were also recovered from his possession and on the basis of the information furnished by him, additional forged currency notes of the value of Rs.2 lakhs were recovered from his Indica car.

3. The fake currency notes have been recovered from the possession of Puran Mal, Anju Ali, Majhar and Liyakat Ali. The recovered currency notes were sent to Indian Security Press, Nasik. Shyam Singh, PW-16, Manager of RBI stated that the seized currency notes were counterfeit. Report P-34 was submitted. The evidence with respect to how material was deposited in the store house had also been adduced by the prosecution. Reports sent by Security Press are exhibits

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P-46, P-47, P-48 and P-51. Raghuveer Singh, SHO, identified the articles recovered from Puran Mal, Anju Ali, Majhar etc.

4. Accused Mehboob was arrested vide memo P4. He submitted information vide Memo Ex. P41. Accused Firoz submitted information vide Memo Ex. P42 under section 27 of the Evidence Act. Both of them informed that forged currency notes were supplied to them by Usman Bhai and Anju Ali residents of Delhi, and they would identify them. The information was recorded by Raghuveer Singh, IO. He had taken the accused Mehboob and Firoz to Delhi. There both of them identified one Maruti car DL-3C-V-2927 in Street No.13, Seelampur, Delhi. They also identified the person who was sitting in the car as Anju Ali for which memo Ex. P16 was prepared and signatures of two witnesses Mukesh Yadav-PW13 and Vinod Sharma-PW11 were also obtained. Mahaveer PW24 accompanied Raghuveer Singh, IO. Vinod Sharma, PW11 though turned hostile, admitted his signatures on memo Ex. P16 and also supported the factum of visiting Delhi along with Police. He drove Vehicle No.RJ-14 7C 4668 and took the policemen from Jaipur to Delhi. Mukesh Yadav PW13 also supported that he had taken the Police to Delhi by his Qualis No.RJ14T-5649. Identification of Anju Ali by Mehboob Ali and Firoz was also supported. On arrest of

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Anju Ali vide memo P13 and on search from his right side pocket of Pant, 350 forged currency notes in the denomination of Rs.500 totalling Rs.1,75,000/- were recovered which were also found to be forged.

5. Accused Anju Ali had furnished information memo P43 dated 7.1.2004 that he had obtained the currency notes in the denomination of Rs.500 from Majhar and he would identify Majhar. On the basis of his information on being identified by Anju Ali, Majhar was arrested on 9.1.2004 at 8.15 p.m. when he was standing near ISBT, where Metro Railway was under construction. Both PW11 and PW13 have confirmed their signatures on the memos. Majhar was arrested vide Memo P-31. On search of Majhar currency notes of the denominations of Rs.500, Rs.100 and Rs.20 were recovered vide memo P19 from the small bag kept by him in the socks of his left foot. Besides, Vinod Sharma PW11, Mukesh Yadav PW13 and Mahaveer Singh PW24 have also supported the factum of recovery and furnishing of information. Currency notes worth Rs.48,220 were recovered from Majhar.

6. The prosecution examined in all 28 witnesses and 53 documents were exhibited. In defence 3 witnesses were examined. The trial court

as well as the High Court have convicted and sentenced the appellants as aforesaid, hence the appeals.

7. It was submitted on behalf of the appellants Mehboob Ali and Mohd. Firoz that the confessional statement of accused persons recorded under section 27 of Evidence Act is not admissible as the accused persons were under the custody of Police. No recovery has been made from accused Mehboob Ali and Mohd. Firoz. As such their conviction is illegal and is liable to be set aside. On behalf of the accused Anju Ali and Majhar it has been submitted that recovery from them has not been proved and their conviction is bad in law.

8 With respect to the appeal of Anju Ali and Majhar, it is apparent that Anju Ali was arrested on the basis of information furnished by Mehboob and Firoz vide memos Ex. P41 and P42 and he was identified by the aforesaid accused persons while he was in Maruti car in Street No.13, Seelampur, Delhi. Vinod PW-11 and Mukesh Yadav PW13 have signed the memo P16. The fact is also supported by Mahaveer Singh PW24. Though Vinod turned hostile but he has admitted his signatures on memo P16 and has supported the factum of visiting Delhi along with Police. Mukesh Yadav, PW-13, has also supported that he had taken the Police to Delhi and Mehboob and Firoz

have pointed out that Anju Ali was in the car on the basis of that he was arrested vide memo P30. On search of Anju Ali, 350 forged currency notes in the denomination of Rs.500 worth Rs.1,75,000/- were seized vide recovery memo P-26.

9. With respect to accused Majhar, information P43 was furnished by accused Anju Ali. Anju Ali identified Majhar while he was standing near ISBT. Mukesh PW-13 has proved memo P43. Vinod PW11, has also admitted his signatures on P-31. Vide recovery memo P19, currency notes in the denominations of Rs.500, Rs.100 and Rs.20 aggregating to Rs.48,220/- were recovered from Majhar. They have been proved to be fake on the basis of the aforesaid reports submitted by the Indian Security Press, Nasik Road. All the currency notes were found to be forged. Shyam Singh, Manager, PW16, has proved the sending of the currency notes to Indian Security Press. The currency notes have been proved to be forged and correctness of reports in this regard has not been questioned in the appeals.

10. In the appeal preferred by Mehboob Ali and Firoz, it was submitted by learned senior counsel appearing on their behalf that the confessional statement of the accused recorded under section 27 of Evidence Act was not admissible as there is no recovery of the

currency notes from their possession. The confession made under the Police custody was inadmissible thus, there was no evidence to convict the appellants Mehboob and Mohd. Firoz.

11. It is apparent from the facts of the case that initially accused Puran Mal was arrested and from his possession forged currency notes were recovered. On the basis of information furnished by him that the currency notes were handed over to him by accused Mehboob and Firoz, they, in turn, have unfolded the entire sequence leading to arrest of accused Anju Ali. Anju Ali was arrested on being identified by Mehboob Ali and Firoz when they were taken from Jaipur to Delhi and the recovery of forged currency notes was made from Anju Ali. Anju Ali identified yet another co-accused Majhar from whose possession also fake currency notes were recovered and information supplied by Majhar ultimately led to arrest of Liyakat Ali from whose possession also forged currency notes and semi-printed currency notes were recovered along with instrument of printing fake currency notes.

12. Section 25 of the Evidence Act provides that no confession made to a Police Officer shall be proved as against a person accused of any offence. Section 26 provides that no confession made by any person while he is in the custody of a police officer, unless it be made

in the immediate presence of a Magistrate, shall be proved as against such person. Section 27 is in the form of a proviso, it lays down how much of an information received from accused may be proved.

13. For application of section 27 of Evidence Act, admissible portion of confessional statement has to be found as to a fact which were the immediate cause of the discovery, only that would be part of legal evidence and not the rest. In a statement if something new is discovered or recovered from the accused which was not in the knowledge of the Police before disclosure statement of the accused is recorded, is admissible in the evidence.

14. Section 27 of Evidence Act refers when any "fact" is deposed. Fact has been defined in section 3 of the Act. Same is quoted below :

> "Fact" means and includes—
> (1) any thing, state of things, or relation of things, capable of being by the senses;
> (2) any mental condition of which any person is conscious. Illustrations:
> (a) That there are certain objects arranged in a certain order in a certain place, is a fact.
> (b) That a man heard or saw something, is a fact.
> (c) That a man said certain words, is a fact.
> (d) That a man holds a certain opinion, has a certain intention, acts in good faith, or fraudulently, or uses a particular word in a particular sense, or is or was at a

specified time conscious of a particular sensation, is a fact.
(e) That a man has a certain reputation, is a fact.
"Relevant". —One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts."

15. It is apparent that on the basis of the information furnished by accused Mehboob Ali and Firoz other accused, Anju Ali was arrested. The fact that Anju Ali was dealing with forged currency notes was not to the knowledge of the Police. The statement of both accused has led to discovery of fact and arrest of co-accused not known to police. They identified him and ultimately statements have led to unearthing the racket of use of fake currency notes. Thus the information furnished by the aforesaid accused persons vide information memos is clearly admissible which has led to the identification and arrest of accused Anju Ali and as already stated from possession of Anju Ali fake currency notes had been recovered. As per information furnished by accused Mehboob and Firoz vide memos P41 and P42, the fact has been discovered by Police as to the involvement of accused Anju Ali which was not to the knowledge of the Police. Police was not aware of accused Anju Ali as well as the fact that he was dealing with fake

currency notes which were recovered from him. Thus the statement of the aforesaid accused Mehboob and Firoz is clearly saved by section 27 of the Evidence Act. The embargo put by section 27 of the Evidence Act was clearly lifted in the instant case. The statement of the accused persons has led to the discovery of fact proving complicity of other accused persons and the entire chain of circumstances clearly makes out that accused acted in conspiracy as found by the trial court as well as the High Court.

16. This Court in *State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru* [(2005) 11 SCC 600] has considered the question of discovery of a fact referred to in section 27. This Court has considered plethora of decisions and explained the decision in *Pulukuri Kottaya & Ors. V. Emperor* [AIR 1947 PC 67] and held thus :

> "1**25.** We are of the view that *Kottaya case [AIR 1947 PC 67]* is an authority for the proposition that "discovery of fact" cannot be equated to the object produced or found. It is more than that. The discovery of fact arises by reason of the fact that the information given by the accused exhibited the knowledge or the mental awareness of the informant as to its existence at a particular place.
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> **126.** We now turn our attention to the precedents of this Court which followed the track of *Kottaya case*. The ratio of the decision in *Kottaya case* reflected in the underlined passage extracted supra was highlighted in several decisions of this Court.

> **127.** The crux of the ratio in *Kottaya case* was explained by this Court in *State of Maharashtra* v. *Damu*. Thomas J. observed that: (SCC p. 283, para 35)
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> > "The decision of the Privy Council in *Pulukuri Kottaya* v. *Emperor* (supra) is the most quoted authority for supporting the interpretation that the 'fact discovered' envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect."
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> In *Mohd. Inayatullah* v. *State of Maharashtra [1976 1 SCC 828]*, Sarkaria, J. while clarifying that the expression "fact discovered" in Section 27 is not restricted to a physical or material fact which can be perceived by the senses, and that it does include a mental fact, explained the meaning by giving the gist of what was laid down in *Pulukuri Kottaya case (supra)*. The learned Judge, speaking for the Bench observed thus: (SCC p. 832, para 13)
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> > "Now it is fairly settled that the expression 'fact discovered' includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this (see *Pulukuri Kottaya* v. *Emperor (supra)*; *Udai Bhan* v. *State of U.P. [1962 Supp (2) SCR 830]*)."

17. In *State of Maharashtra v. Damu Gopinath Shinde & Ors*. [AIR 2000 SC 1691] the statement made by the accused that the dead body of the child was carried up to a particular spot and a broken glass piece recovered from the spot was found to be part of the tail lamp of the

motorcycle of co-accused alleged to be used for the said purpose. The statement leading to the discovery of a fact that accused had carried dead body by a particular motorcycle up to the said spot would be admissible in evidence. This Court has laid down thus :

> "**36.** The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered in a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature, but if it results in discovery of a fact it becomes a reliable information. Hence the legislature permitted such information to be used as evidence by restricting the admissible portion to the minimum. It is now well settled that recovery of an object is not discovery of a fact as envisaged in the section. The decision of the Privy Council in *Pulukuri Kottaya* v. *Emperor AIR 1947 PC 67* is the most quoted authority for supporting the interpretation that the "fact discovered" envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect.
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> **37.** No doubt, the information permitted to be admitted in evidence is confined to that portion of the information which "distinctly relates to the fact thereby discovered". But the information to get admissibility need not be so truncated as to make it insensible or incomprehensible. The extent of information admitted should be consistent with understandability. In this case, the fact discovered by PW 44 is that A-3 Mukinda Thorat had carried the dead body of Dipak to the spot on the motorcycle.

> **38.** How did the particular information led to the discovery of the fact? No doubt, recovery of dead body of Dipak from the same canal was antecedent to the information which PW 44 obtained. If nothing more was recovered pursuant to and subsequent to obtaining the information from the accused, there would not have been any discovery of any fact at all. But when the broken glass piece was recovered from that spot and that piece was found to be part of the tail lamp of the motorcycle of A-2 Guruji, it can safely be held that the Investigating Officer discovered the fact that A-2 Guruji had carried the dead body on that particular motorcycle up to the spot.
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> **39.** In view of the said discovery of the fact, we are inclined to hold that the information supplied by A-2 Guruji that the dead body of Dipak was carried on the motorcycle up to the particular spot is admissible in evidence. That information, therefore, proves the prosecution case to the abovementioned extent."

18. In *Ismail v. Emperor* [AIR 1946 Sind 43] it was held that where as a result of information given by the accused another co-accused was found by the police the statement by the accused made to the Police as to the whereabouts of the co-accused was held to be admissible under section 27 as evidence against the accused.

19. In *Subedar & Ors. v. King-Emperor* [AIR 1924 All. 207] it was held that a statement made by the accused implicating himself and others cannot be called 'first information report'. However it was held

that though it could not be treated as first information report but could be used as information furnished under section 27 of Evidence Act. It was held thus :

> "The approver and one of the appellants were arrested practically red-handed. They made statements to the officer who arrested them involving admissions of guilt. They went further and gave a list of the other members of the gang. Thereupon the officer made a report in writing to his superior, containing the information which he had received, including the names of those other persons received from the two men arrested. Somehow or other, the learned Judge has described this police report, which is merely the report of a confession, as "the first information report." Now the first information report is a well known technical description of a report under section 154, Criminal Procedure Code, giving first information of a cognizable crime. This is usually made by the complainant, or by some one on his behalf. The language is inapplicable to a statement made by the accused. The novelty of a statement by an accused person being called the first information report was to me so strange, that when counsel for the appellants addressed the argument to me attacking the Judge's use of the first information report, I took no notice of the argument. The learned Judge realized that he was dealing with a confession, but he momentarily failed to appreciate that the document itself was inadmissible, and that the only way in which the information relied upon could be used was by section 27. That is to say, with regard to the other accused, the officer giving evidence might say : "I arrested them in consequence of information received from Narain and Thakuri. When I arrested them they made a statement to me which caused me to arrest these

> people". The use which can legitimately be made of such information is merely this, that when direct evidence is given against the accused at the trial and there was evidence against the accused, it is open to the defence to check such evidence by asking whether the name of a particular accused was mentioned or not at the time…."

20. Considering the aforesaid dictums, it is apparent that there was discovery of a fact as per the statement of Mehmood Ali and Mohd. Firoz. Co-accused was nabbed on the basis of identification made by the accused Mehboob and Firoz. He was dealing with fake currency notes came to the knowledge of police through them. Recovery of forged currency notes was also made from Anju Ali. Thus the aforesaid accused had the knowledge about co-accused Anju Ali who was nabbed at their instance and on the basis of their identification. These facts were not to the knowledge of the Police hence the statements of the accused persons leading to discovery of fact are clearly admissible as per the provisions contained in section 27 of the Evidence Act which carves out an exception to the general provisions about inadmissibility of confession made under police custody contained in sections 25 and 26 of the Evidence Act.

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21. As a result, we find no merit in the appeals. The judgment and order of sentence passed by the trial court and confirmed by the High Court are found to be appropriate. Thus the appeals being devoid of merit, are hereby dismissed.

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……………………….CJI
(H.L. Dattu)

New Delhi;
October 27, 2015.

……………………..J.
(Arun Mishra)

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