



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.12.2013

CORAM:

THE HONOURABLE MRS.JUSTICE ARUNA JAGADEESAN

CRL.RC (MD) NO.705/2013
MP (MD) No.1/2013

Victor Samraj Duraisingh : Petitioner

Vs

Francis Kumar : Respondent

Prayer:- This Criminal Revision Case is filed against the order dated 25.7.2013 made in Cr.MP.No.4220/2013 in CC.No.546/ 2012 by the learned Judicial Magistrate, FTC (Magisterial Level), Tuticorin.

For Petitioner : Mr.S.Deenadhayalan
For Respondent : Mr.R.Anand

Order

By consent of the learned counsel on either side, this criminal revision petition is taken up for final disposal, at the admission stage itself.

2. This Criminal Revision Case is filed against the order dated 25.7.2013 made in Cr.MP.No.4220/2013 in CC.No.546/ 2012 by the learned Judicial Magistrate, FTC (Magisterial Level), Tuticorin, allowing the petition filed under Section 326(3) of Cr.PC for denovo trial.

3. The question of considerable significance raised in this revision is that in view of the provision contained in Section 143 of the Negotiable Instruments Act, the succeeding Magistrate whether requires to hold a denova trail as contemplated under Section 326(3) of Cr.PC or can act on the evidence so recorded by his predecessor and proceed further from the stage at which he takes over and decide the case as contemplated under Section 326(1) of Cr.PC. In the present case, it appears that the case has been posted for defence side arguments after completion of evidence on the side of the complainant as well as on the defence side. It is also seen that on the side of the complainant, arguments note was submitted before the court and the case is posted for defence side arguments. In the said stage, the Respondent herein filed a petition seeking permission to conduct the denovo trial on the ground that the evidence was recorded by the predecessor Magistrate and therefore, the successor Magistrate cannot proceed with the evidence taken by the predecessor Magistrate. The learned Judicial Magistrate allowed the said petition and ordered denovo trial, in terms of the provisions under Section 326(3) of Cr.PC and also relying upon the decision of the Honourable Supreme Court reported in **2012-2-MLJ-Crl-388-SC (Nitinbhai Saevatilal Shah and Another Vs. Manubhai Manjibhai Panchal and another).**



4. Mr.S.Deenadhayalan, the learned counsel for the Petitioner, at the very outset, submitted that though Section 143 of the Negotiable Instruments Act mandates that the trial in the case filed under Section 138 of the Negotiable Instruments Act should be tried in a summary manner, however, if the proceedings taken in the court indicate that it was not tried in the summary way and was in fact tried as regular summons or warrants case, the provisions contained in Section 326(3) would not be attracted. The learned counsel invited my attention to the facts of the present case and to the evidence recorded by the learned Magistrate and submitted that by no stretch of imagination, it could be said that scanty provisions of Sections 263 and 264 of Cr.PC were fully and strictly complied with. On the contrary, it is clear that the learned Magistrate had tried the case as a regular warrants case. The learned counsel, therefore, submitted there is no need for conducting denovo trial as directed by the learned Judicial Magistrate in this case and the matter be remanded back to the same court to decide it on merits and in accordance with law. The learned counsel in support of his submissions placed reliance on the unreported decision of this court dated 6.6.2013 in CrI.RC(MD)No.128/2013.

5. On the other hand, Mr.R.Anand, the learned counsel for the Respondent submitted that the trial in the case under Section 138 of the Negotiable Instruments Act should be summary in nature as contemplated under Section 143 of the Negotiable Instruments Act and therefore, in any case, the successor Magistrate cannot pass a order of conviction order against the accused on the basis of the evidence recorded by his predecessor. The only option left open to the successor Magistrate is to conduct denovo trial. The learned counsel would further submit that sub section (1) of Section 326 of Cr.PC has no application to the summary trial cases and therefore, the trial has to be conducted denovo in the event of transfer of a Magistrate who has recorded the evidence. In support of his argument, he placed reliance on the decision of the Honourable Supreme Court reported in **2012-2-MLJ-CrI-388-SC (Nitinbhai Saevatilal Shah and Another Vs. Manubhai Manjibhai Panchal and another)**.

6. Before I proceed further, it would be relevant to make a short reference to the provisions, to which specific reference was made in the course of arguments. The arguments advanced by the learned counsel for the parties were centered around the provisions contained in Section 143 of the Negotiable Instruments Act. It would be advantageous to reproduce Section 143 of the Act for addressing the question and to know the exact purport of the said provision. Section 143 of the Act reads thus:-

"143. Power of Court to try cases summarily:- (1)

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under this Chapter shall be tried by a Judicial Magistrate of the first class or by a Metropolitan Magistrate and the provisions of Sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trials:

Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year and an amount of fine exceeding five thousand rupees.



Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code.

(2) The trial of the case under this section shall, so far as practicable consistently with the interests of justice, be continued from day to day until its conclusion, unless the Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded in writing.

(3) Every trial under this section shall be conducted as expeditiously as possible and an endeavour shall be made to conclude the trial within six months from the date of filing of the complaint."

7. A bare look at this Section would show that the trial in a case filed under Section 138 of the Negotiable Instruments Act shall be tried in a summary manner. It empowers the Magistrate to pass a sentence of imprisonment for a term not exceeding one year and an amount of fine not exceeding five thousand rupees. It also provides that if it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed, he could do so after hearing the parties and recalling any witness, who may have been examined and to proceed hearing or rehearing the case in the manner provided in the Code. Under this provision, so far as practicable, the Magistrate is expected to conduct trial on day to day basis until its conclusion and conclude the trial within six months from the date of filing of the complaint. It is clear from the bare look at this provision that the legislature intended to speed up the procedure in disposing of the cases under Section 138 of the Negotiable Instruments Act.

8. The next is Section 326 of the Code and in particular sub section (3) thereof. It would be relevant to reproduce Section 326 of Cr.PC as under:-

"326. Conviction or commitment on evidence partly recorded by one Judge or Magistrate and partly by another:- (1) Whenever any judge or Magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein and is succeeded by another judge or Magistrate who has and who exercise such jurisdiction, the Judge or Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself:



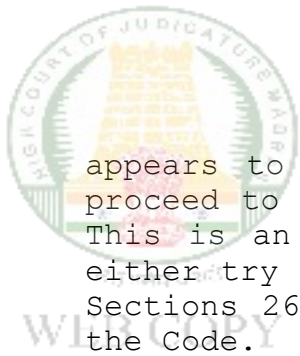
Provided that if the succeeding Judge or Magistrate, is of the opinion that further examination of any of the witness whose evidence has already been recorded is necessary in the interests of justice, he may re-summon any such witness, and after such further examination, cross examination and re-examination, if any, as he may permit, the witness shall be discharged.

(2) When a case is transferred under the provisions of this Code from one Judge to another Judge or from one Magistrate to another Magistrate, the former shall be deemed to cease to exercise jurisdiction therein, and to be succeeded by the latter, within the meaning sub section (1).

(3) Nothing in this section applies to summary trials or to cases in which proceedings have been stayed under Section 322 or in which proceedings have been submitted to a superior Magistrate under Section 325."

9. A plain reading of sub section (1) of Section 326 of the Code would show that the successor Magistrate can act on the evidence recorded by his predecessor either in whole or in part and if he is of the opinion that further examination is required, he may recall that witness and examine him. In short, it states that there is no need to conduct the retrial or denovo trial, where the cases were conducted as summons or warrant cases. Sub section (2) of Section 326 of the Code provides that when there is transfer of case from one Magistrate to another, the former shall be deemed to cease to exercise jurisdiction therein and to be succeeded by the latter, within the meaning sub section (1). Sub section 3 of Section 326 of the Code makes it explicitly clear that nothing in sub sections (1) and (2) would apply to summary trials or to cases in which proceedings have been stayed under Section 322 or in which the proceedings have been submitted to a superior Magistrate under Section 325, which makes it explicitly clear.

10. Broadly speaking, a summary trial is abridged form of the regular trial and is resorted to in order to save time in trying petty cases. It is essentially a speedy trial dispensing with unnecessary formalities or delays and giving discretion to the Magistrate to try or not to try an offence triable summarily in a summary manner. Section 143 of the Act empowers the court to try cases under Section 138 of the Negotiable Instruments Act in a summary way. It starts with non-obstante clause carving out an exception to the provisions of the Code. Sub section (1) thereof, however, empowers the Magistrate to follow the provisions of Sections 262 to 265, as far as may be, for trying the cases under Section 138 of the Act. The phraseology "as far as may be" employed in sub section (1) gives an option to the Magistrate to depart from the procedure contemplated under Sections 262 to 265 of the Code. Thus, it is not mandatory for the Magistrate to follow the procedure contemplated under Sections 262 to 265 of the Code and it is left to the discretion of the Magistrate to follow the procedure of summary trial contemplated under those provisions to the extent it is possible. The second proviso to sub section (1) of Section 143 further empowers the Magistrate in a case which is being tried in a summary way, if it



appears to him to recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the Code. This is an indication that the choice is left to the Magistrate to either try the case strictly by following the procedure contemplated by Sections 262 to 265 of the Code or to adopt the procedure provided by the Code.

11. In the instant case, the entire evidence was recorded by the predecessor Magistrate as a summons warrant case. On a perusal of the evidence recorded reveals that the Petitioner/complainant gave evidence on affidavit as provided for in sub section (1) of Section 145 of the Act. All the documents referred to in the affidavit in examination in Chief were exhibited by the learned Magistrate. The complainant PW.1 was cross examined in detail by the Respondent. It further appears that after the evidence of the complainant was closed, the Respondent/ accused also adduced evidence in defence. Therefore, it is apparently clear that the evidence recorded by the learned Magistrate was full-fledged evidence led by the parties and admittedly, it was not in the form indicated in Section 264 of the Code. In other words, the evidence recorded in the present case clearly indicates that the case was not tried in summary way and was in fact tried as regular summons or warrants case though it was triable summarily under Section 143 of the Act. In the said facts and circumstances, there is no need to conduct denovo trial and hence, the impugned order passed by the learned Judicial Magistrate ordering denovo trial deserves to be set aside.

12. In the result, this criminal revision petition is allowed and the impugned order dated 25.7.2013 made in Cr.MP.No.4220/2013 in CC.No.546/ 2012 by the learned Judicial Magistrate, FTC (Magisterial Level), Tuticorin is set aside. The matter is remanded back to the learned Judicial Magistrate and the learned Judicial Magistrate is directed to act on the evidence recorded by his predecessor and dispose of the case, on merits and in accordance with law, as expeditiously as possible. Consequently, the connected MP is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub-Assistant Registrar

To:

1. Judicial Magistrate, FTC (Magisterial Level), Tuticorin
 - 2.-do-thro' The Chief Judicial Magistrate, Tuticorin.
 3. The Public Prosecutor, Madurai Bench of Madras High Court, Madurai
- Copy to : The Section officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai

CRL.RC (MD) NO.705/2013

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