

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 535 OF 2016

Shubham Motors and Omkar Auto Mobiles Vs. Anil Ramesh Ararwal & Anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders.

Court's or Judge's orders

Mr. Vikas Shivarkar for Applicant.
Mr. Umesh Mankapure for Respondent No.1.
Mr. A.S. Patil, APP for State.

CORAM : A.S. GADKARI, J.
DATE : 11th July 2016.

P.C.:

1 Heard the learned counsel for the applicant and the learned counsel for the respondent No.1 and perused the record annexed to the present application.

2 By the present application under Section 482 of Cr. P.C., the applicant, original accused has taken exception to the Order dated 12.4.2016 passed by the Judicial Magistrate First Class, Miraj, District-Sangli in Summary Criminal Case No.474 of 2011.

3 The record reveals that the respondent No.1 instituted a complaint under Section 138 of the Negotiable Instruments Act in the Court of Judicial Magistrate

First Class, Miraj, District-Sangli on 21.10.2011. That the respondent No.1 filed his affidavit in lieu of examination in chief on 18.6.2012 below Exhibit 14. That on 21.9.2012 the respondent No.1 was cross-examined by the applicant. On 5.10.2012 the complainant submitted a pursis below Exhibit 28 stating that he does not intend to lead any further evidence. The statement of the applicant under Section 313 of Cr. P.C. was recorded on 16.10.2012. It further reveals that on 22.10.2012 the respondent No.1 filed an application below Exhibit 30 seeking permission to lead additional evidence. The said application was allowed and the witness summons was issued to the concerned witness. That the respondent No.1 filed three other applications for the same relief. It further reveals from the record that from 4.6.2015 the concerned earlier Magistrate was on leave and the successor in title assumed the charge on 16.2.2016. The said complaint was thereafter listed on board on 16.2.2016, 14.3.2016 and 12.4.2016. On 12.4.2016 the successor in title of the office of the Magistrate has suo-moto passed the impugned order dated 12.4.2016, ordering that the present case is “summons trial and hence de-novo trial”.

4 Mr. Shivarkar, the learned counsel for the applicant submitted though the trial pertaining to the offence under Section 138 of the Negotiable Instruments Act was required to be tried as a summary case, the earlier Magistrate conducted it as summons triable case. He submitted that the case has reached the stage upto to recording of the statement of the applicant under Section 313 of Cr. P.C., and the

impugned Order passed by the learned Magistrate thereby directing de-novo trial is prejudicial to the interest of the applicant-accused. He submitted that the subsequent Magistrate i.e. successor in title of the office of the Judicial Magistrate First Class, Miraj, District-Sangli ought to have proceeded with the trial of the case from the stage where it had halted and ought not to have passed Order of de-novo trial. In support of his contention, he relied upon two decisions of this Court namely (1) Shivaji Sampat Jagtap Vs. Rajan Hiralal Arora & Anr reported in 2006(2) Bom. C.R. (Cri) 590 and (2) Jaikishan Kanjiwani Vs. M/s Kumar Matching Centre, reported in 2011 Cri. L.J. 134,

5 It is a matter of record that though the trial in the present case ought to have been conducted as summary trial, the learned Judicial Magistrate First Class, Miraj, District-Sangli has conducted it as summons triable case. As stated hereinabove, the case is reached upto the stage of recording of statement of the applicant under Section 313 of Cr. P.C. That neither the applicant nor the respondent No.1 filed an application for conducting the said trial de-novo and the Magistrate itself suo-motu passed the order directing the matter be tried as de-novo trial being summons triable case. The learned counsel for the respective parties did not dispute that the nomenclature of the title of the case in conducting it would make any substantial change. Mr. Mankapure, the learned counsel for the respondent No.1 fairly conceded the fact that the said case was conducted as summons triable case and he has no

objection for the same and the learned Magistrate may be directed to conduct the trial from the stage which it had on 4.6.2015.

6 In view of the ratio laid down in the aforesaid two Judgments and in view of the fact that the trial has reached at fag-end, the impugned Order directing that the trial be conducted as “de-novo trial” will not sub-serve the interest of either of the parties. In view of Section 326(1) of the Cr. P.C. it is necessary for the concerned Magistrate to proceed further with the case.

7 In the circumstances, the impugned Order dated 12.4.2016 passed by the Judicial Magistrate First Class, Miraj, District-Sangli is hereby set aside. The learned Judicial Magistrate First Class, Miraj, District-Sangli seized of summary criminal case No.474 of 2011 is hereby directed to conduct trial from earlier stage i.e. from the stage of examining the defence witness, if the applicant desires to do so and conclude the same as expeditiously as possible and to make an endeavour to conclude it by 31st December 2016.

8 The Application is allowed in the aforesaid terms.

(A.S. GADKARI, J.)