

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 3789 OF 2014

Narendra Popatrao PagarPetitioner
V/s.
Purshottam Anant Dandgavhal and anotherRespondents

WITH
CRIMINAL WRIT PETITION NO. 3790 OF 2014

Narendra Popatrao PagarPetitioner
V/s.
Shirish Shankarrao HandgeRespondent

Mr. G. R. Agrawal Advocate for Petitioner.
Mr. Amey Deshpande Advocate for Respondent no. 1
Ms. A. T. Jhaveri APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : JUNE 20, 2016.

PC :

Heard.

- 2) Rule. Rule made returnable forthwith with the consent of the parties.
- 3) Petitioner herein impugns the order dated 07/08/2014 passed by Additional Sessions Judge, Nashik in Criminal Revision Application No. 168 of 2014 and Cri. Revision Application No. 169 of 2014. Petitioner herein

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happens to be accused in S.C.C. No. 3509 of 2004 & S.C.C. No. 7258 of 2000. Accused is being tried for offence punishable under section 138 of Negotiable Instruments Act. It appears from the impugned order that complainant had filed an affidavit of evidence. His cross-examination was concluded on 27/07/2007. There was change of assignment and the matter was transferred to another Judicial Magistrate First Class. By an order dated 23/12/2011 by placing reliance upon the Judgment of Hon'ble Apex Court in the case of **Nitinbhai Saevantilal Shah V/s. Manubhai Manjibhai Panchal and another [2011 SAR (Crl.) 808]** learned Magistrate had directed that there shall be a *de novo* trial due to transfer of the Magistrate and that the accused was being tried summarily under section 138 of Negotiable Instruments Act. Accused had then filed an application on 21/12/2013 before learned Magistrate and had prayed that since there was change of Magistrate, learned Magistrate shall once again conduct *De-nova* trial. It is a matter of record that in the application, it was not mentioned that the cross-examination of the complainant was concluded in 2007. It was submitted that application is frivolous and vexatious and required to be rejected. Learned Magistrate by an order dated 20/01/2014 had rejected the said application. Learned

Magistrate had specifically observed that his learned predecessor had not adopted the summary procedure. Evidence was recorded in detail and the deposition of each witness was exhibited separately. Learned Magistrate had rightly rejected the application.

4) Being aggrieved by the said order, accused had filed Criminal Revision Application No. 168 of 2014 before the Sessions Court. Learned Revisional Court has specifically observed that cross-examination was completed on 27/07/2007. It is also observed that accused had sought adjournments on several occasions and without taking into consideration the fact that cross-examination was already recorded in 2007, learned Magistrate had observed that examination-in-chief of complainant is by affidavit, cross-examination shall be fresh. In fact, cross-examination was already completed. It was the third time when the accused had filed an application seeking *De-nova* trial. Learned Sessions Court vide order dated 07/08/2014 was pleased to reject the Revision Application. Hence, this writ petition.

5) By an order dated 01/10/2014, this Court had granted ad-interim relief in terms of prayer clause (d) and the proceedings were stayed. Learned counsel for the Respondent submits that at present the matter is posted for

arguments. Learned counsel for the Respondent has placed reliance upon the Judgment of Hon'ble Apex Court in the case of **J. Baharuni and another V/s State of Gujarat [2014 (10) Supreme Court Cases 494]** wherein the Hon'ble Apex Court has observed as follows:

“A case under Section 138 of the Negotiable Instruments Act, 1881 (the NI Act), which requires to be tried in a summary way as contemplated under Section 143 of the NI Act, when in fact, was tried as regular summons case would not come within the purview of Section 326 (3) CrPC. In other words, if the the case in substance was not tried in a summary way, though was triable summarily, and was tried as a regular summons case, it need not be heard de novo and the succeeding Magistrate can follow the procedure contemplated under Section 326 (1) CrPC. Where in a case that can be tried summarily, the court records the evidence elaborately and in verbatim and defence was given full scope to cross-examine, such procedure adopted is indicate that it was not summary procedure and therefore, succeeding Magistrate can rely upon the evidence on record and de novo enquiry need not be conducted”.

The Hon'ble Apex Court further observed as follows:

“The de novo trial of entire matter should be ordered in exceptional and rare cases and only when such course of fresh trial becomes indispensable to avert failure of justice. Hence, de novo trial is only for exceptional cases when the finding of acquittal is on a total misreading and perverse appreciation of evidence. There is patent illegality in the approach undertaken by the High Court in remanding the matter for a de novo trial mechanically on the ground of change of the Magistrate, without proper appreciation of the material before it. In the present case on hand, without strong, cogent, unimpeachable evidence on record that cases were tried “summarily” but not as regular trial, the High Court gravely erred in remanding them to the trial court for a de novo trial”.

6) In the present case also since it cannot be said that proceedings were summary in nature. It is a matter of record that in the present case, the matter was not tried in a summary manner but an elaborate cross-examination was recorded and therefore, in view of the Judgment in the case of **J. V. Baharuni and another** *cited supra* remanding the matter for *de novo* trial is not only an abuse of process of Law but would result into denial of justice as the case is being delayed on unwarranted grounds. In view of the above discussion, petitions deserves to be dismissed. Hence, following order.

(i) Writ petitions, being sans merits, stand rejected.

7) Needless to say that interim relief granted vide order dated 01/10/2014 stands vacated forthwith. Office to communicate this order to Judicial Magistrate First Class, Nashik. Learned Magistrate shall proceed with the matter forthwith, in accordance with Law.

(SMT. SADHANA S. JADHAV, J.)