

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 856 OF 2016

Shri. Lalaso Rangrao Pawar

... Petitioner

vs.

Maresh Annasaheb Kupade & anr.

... Respondents

Mr. Mahindra B. Deshmukh, Advocate for the petitioner.

Ms. Anamika Malhotra, A.P.P. for the State/respondent no.2.

Coram : Smt. R. P. SondurBaldota, J.

Date : 6th March, 2017.

P.C. :

1. The petitioner herein is the original complainant in Summary Criminal Case No. 414 of 2010 pending in the Court of Judicial Magistrate, First Class, Vita. By this petition, he is challenging the legality and propriety of the order dated 7th December, 2015 passed by the Sessions Court in Criminal Revision Application No. 23 of 2012, whereby the order dated 23rd January, 2012 passed by the Trial Court in the Summary Criminal Case No. 414 of 2010 has been set aside.

2. The brief facts giving rise to the present petition are that, the petitioner filed Summary Criminal Case No.414 of 2010 for the offence punishable under Section 138 of Negotiable Instruments Act, in which process was issued on 6th September, 2010. Thereafter, the entire trial is conducted. The petitioner examined himself and one witness and respondent no.1 examined in all three defence witnesses. At this stage, the

learned Magistrate who had recorded evidence came to be transferred. The petitioner, contended before the succeeding Magistrate that in view of the decision of the Apex Court in *Nitinbhai Saevatilal Shah & anr. vs. Manjibhai Pannchal & Ors.* reported in 2011 ALL SCR, page 2130, the trial was required to be conducted de-novo. His contention was accepted by the trial Court and the order dated 23rd January, 2012 was passed for de-novo trial. Respondent no.1 accused challenged the order by filing Criminal Revision Application No. 23 of 2012 in the Sessions Court, Sangli, which came to be allowed on 17th December, 2015 and the order of the Trial Court is set aside.

3. Mr. Deshmukh, the learned advocate for the petitioner submits that the Sessions Court has misinterpreted the order of the Apex Court in *Nitin Bhai's* case (*supra*) and passed the impugned order. It is his argument that, in view of Section 143 of the of the Negotiable Instruments Act, every trial under Section 138 thereof is a summary trial and it must be conducted as a summary trial. In case of a summary trial, a Magistrate cannot consider the evidence recorded by another Magistrate.

4. The impugned order, notes that though the complaint had been filed and registered as summary criminal trial, it has been conducted as regular criminal case and not a summary criminal case, by following procedure under Section 263, 264 Criminal Procedure Code. The recording of the evidence has been done not in a manner of summary criminal case but in the manner of regular criminal case. The learned Magistrate had not recorded the substance of the statements given by the witnesses before him. The petitioner herein has filed his affidavit of examination-in-chief and his cross-examination has

been conducted at length. Therefore, de-novo trial by the succeeding Magistrate is not warranted.

5. The impugned order distinguishes the decision in Nitinbhai's case on facts. The distinction has been correctly drawn. In that case, the trial had been conducted summarily and a pursis was filed by both sides that they had no objection to proceed with the matter on the basis of evidence already recorded. Such pursis was held to be misconceived. Therefore, there is no merit in the challenge to the impugned order. It is obvious that, the application before the trial Court was not a bonafide application. Hence, the petition is dismissed.

[Smt. R. P. SondurBaldota, J.]