



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 05.03.2018

Delivered on : 14.03.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

CrI.O.P.(MD)No.15617 of 2013

and

M.P.(MD)No.1 of 2013

Glory Rani

... Petitioner/Accused

Vs.

Asokan,

Rep. by his father and Power Agent,

Subramanian

... Respondent/
Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to direct the learned Judicial Magistrate, Devakottai, to act on evidence so recorded by his predecessor in S.T.C.No.827 of 2008 and may adjudicate the matter from the spot left by the predecessor Magistrate and dispose of the matter within a time.

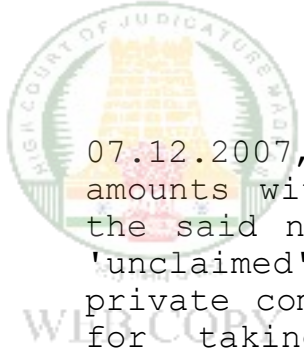
For Petitioner : Mr.K.P.Narayanakumar

For Respondent : Mr.P.Kandasamy
for Mr.B.Muruganandam

ORDER

The petitioner herein is the Accused in S.T.C.No.827 of 2008 on the file of the Judicial Magistrate Court, Devakottai. He filed this Criminal Original Petition seeking a direction to the abovesaid Magistrate to act on evidence so recorded by his predecessor in the abovesaid case and may adjudicate the matter from the spot left by the predecessor Magistrate and to dispose of the matter within a time short span of time, in accordance with law.

2.Now, on going through the case of the respondent, it seems that admittedly, the petitioner herein issued two post-dated cheques, dated 15.03.2007 for Rs.50,000/-; and 30.09.2007 for Rs.2,25,000/-. The respondent herein deposited the second cheque of Rs.2,25,000/- for encashment on 13.11.2007, but the same was returned on 20.11.2007 for the reason that 'Funds insufficient' and therefore, the respondent issued a notice on



07.12.2007, in which, he requested the petitioner to pay the cheque amounts within a period stipulated in the notice. Unfortunately, the said notice was not served on the petitioner, but returned as 'unclaimed'. So, without any alternative, the respondent lodged a private complaint before the Judicial Magistrate Court, Devakottai, for taking cognizance under Section 138 of the Negotiable Instruments Act, 1881 [hereinafter referred to as 'the Act']]. After taking cognizance, the learned Magistrate proceeded with the trial and recorded the evidences of the respondent/complainant as P.W.1 on 30.10.2010 itself. Thereafter, the case was posted for further evidence on the side of the respondent and subsequently, after examining the witnesses on the side of the respondent, the evidence of the respondent was closed on 08.05.2013 and thereafter, the matter was posted for arguments on 30.05.2013.

3. In the above situation, the learned Magistrate, who was trying the abovesaid case, was transferred and new Magistrate took charge of the Court. After assuming Office, on 26.06.2013, the learned Magistrate ordered *de-novo* trial, against which, the petitioner has come out with the present Criminal Original Petition for the relief stated supra.

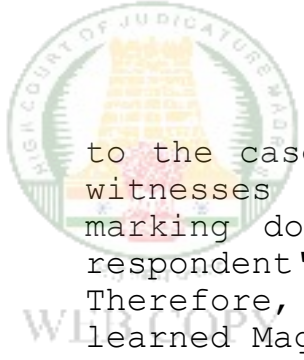
4. No doubt, as per the judgment of the Hon'ble Supreme Court in *Nitinbhai Saevantilal Shah and another Vs. Manubhai Manjibhai Panchal and another* reported in 2012 (1) LW (Cr1.) 125, if the predecessor of the Magistrate, tried the said case as per the provisions contemplated in Sections 262 to 265 Cr.P.C., there is no alternative to the Successor except to pass an order of *de-novo* trial. But, in this case, during the time of trial, the respondent/complainant was examined as P.W.1 and after marking documents on the side of the respondent, opportunity was given to the petitioner herein for cross-examination and after completing the cross-examination, without complying with the provisions enumerated in Section 313 Cr.P.C., the learned Magistrate posted the case for defence side witness. In this occasion, it is necessary to see the judgment of this Court in *Victor Samraj Duraisingh Vs. Francis Kumar* reported in 2014 (2) MWN (Cr.) DCC 80 (Mad.), wherein it has been held as follows:-

'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 carrying 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 P.W.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 de novo trial and hence, the impugned Order passed by the learned Judicial Magistrate ordering de novo trial deserves to be set aside.''



to the case on hand, in the present case also, after examining the witnesses on the side of the respondent/complainant and after marking documents as exhibits, the learned Magistrate closed the respondent's side evidence and posted the case for arguments. Therefore, it is apparently clear that the evidence recorded by the learned Magistrate was full-fledged evidence led by the parties. In the said facts and circumstances, there is no need to conduct de-novo trial and hence, the impugned order dated 26.06.2013, passed by the learned Judicial Magistrate, Devakottai, ordering de-novo trial deserves to be set aside and accordingly, the same is set aside.

6. In the result, this Criminal Original Petition is allowed and the learned Judicial Magistrate, Devakottai, is directed to act on the evidences recorded by his predecessor and proceed with the case after giving an opportunity to either side for adducing further evidence and dispose of the case by following the procedure laid in Chapter XX of Cr.P.C., as expeditiously as possible. Consequently, connected Miscellaneous Petition is closed.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate,
Devakottai, Sivagangai.

2. Do through Chief Judicial Magistrate,
Sivagangai District.

+1cc to Mr.B.Muruganandam Advocate, SR.No. 54971

+1cc to Mr.K.P.Narayanakumar Advocate, SR.No.55177

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14.03.2018

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