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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

Cr1.R.C (MD) .No.419 of 2013 and

MP (MD) .No.2 of 2013

Ganesan

... Petitioner

Vs

Devaraj

... Respondent

PRAYER: Petition filed under Section 397 r/w 401 Code of Criminal Procedure, against the to call for the records to the Judgment dated 09.03.2013 in C.A.No.63 of 2012 passed by the learned I Additional Sessions Judge, Tuticorin and set aside the same.

For Petitioner : Mr.B.Rajesh Saravanan

For Respondent : Mr.R.Anand

ORDER

The revision petitioner is the complainant in C.C.No.173 of 2012 on the file of the Fast Track Court (Magisterial Level), Kovilpatti.

2. The learned Trial Magistrate found the respondent accused guilt of the offence under Section 138 of Negotiable Instruments Act and convicted and sentenced him by Judgment, dated 09.11.2012. Questioning the same, the accused filed C.A.No.63 of 2012, before the learned I Additional District and Sessions Judge, Tuticorin. The learned Appellate Judge, by Judgment dated 09.03.2013, set aside the conviction and sentence imposed by the learned Trial Magistrate and remitted the matter for fresh trial. According to the lower Appellate Court, PW.1 was examined by Judicial Magistrate No.I, Kovilpatti and that thereafter, the case was transferred to Fast Track Court (Magisterial Level), Kovilpatti. The succeeding Magistrate examined another witness. The witness already examined were not examined by the the succeeding Magistrate. Succeeding Magistrate passed the Judgment based on the evidenced recorded by the previous Magistrate. According to the lower Appellate Court, hence, the entire Judgment was vitiated. This Judgment passed by the lower Appellate Court put to challenge in the Cr1.R.C.,

3. The learned counsel appearing for the complainant <https://hcservices.courts.gov.in/hcservices/evidence.html> in this case, evidence of PW.1 was recorded in full. The evidence of PW.1 was not recorded in a summary manner.



Therefore, the decision reported in **2014 Cr1.L. J. 1953 (Mehsana Nagrik Sahkari Bank Ltd., Vs. Shreeji CAB Co., and Ors etc.,)** can be applied. The Hon'ble Supreme Court observed in the said decision as follows:

"4. Mr. Huzefa Ahmadi, learned Senior counsel appearing for the appellant- Bank pointed out that the law laid down by this Court in the above authority is that when a proceeding is conducted as a summary trial, and when one Magistrate has partly heard the case and is succeeded by another Magistrate, that second Magistrate has to re-hear the whole case afresh and he cannot start from the stage the first Magistrate left it. There was no question of the High Court asking the entire matter to be looked into by another Magistrate de novo, in the present case because, in fact, the evidence had not been recorded in a summary manner, but it was recorded in full. Mr. Sanjanwala, learned counsel appearing for the respondents, on the other hand, submits that the law laid down in *Nitinibhai Saevatilal Shah & Anr. Vs. Manubhai Manjjibhai Panchal & Anr* (AIR 2011 SC 3076) (supra) be followed.

5. We have perused the notes of evidence which are produced on record. They clearly show that the evidence in this case was recorded in full and not in a summary manner. That being so, we cannot but accept the submission of Mr. Ahmadi.

6. In the facts and circumstances of the case, we allow the appeal, set aside the order passed by the High Court and direct the Additional Chief Judicial Magistrate Mehsana, to proceed hereafter from the stage where it is pending now. As far as the application of the respondents for adding some other person to the complaint is concerned, we are not inclined to accept that. It is for the complainant to decide as to against which party it wants to proceed. The application will stand rejected. "

4. In such view of the matter, the Judgment passed by the lower Appellate Court is set aside and the matter is remanded back to the First Appellate Court. The first Appellate Court shall hear both the parties and dispose of C.A.No.63 of 2012 on merits and in accordance with law, within a period of two months from the date of receipt of a copy of this order.

5. It is represented by both sides counsel before this Court that it is not necessary to issue a fresh notice by the lower Appellate Court take up for the Criminal Appeal on 12.07.2019.



6. Parties herein are directed to appear before the lower Appellate Court on 12.07.2019 through their counsel.

7. The Criminal Revision Case is allowed accordingly. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar(CS)

trp

To

1. THE I ADDITIONAL SESSIONS JUDGE, TUTICORIN.
2. THE JUDGE, FAST TRACK COURT, (MAGISTRATE LEVEL)
KOVILPATTI.

Copy to

1. The Section Officer, Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)
2. The Section Officer, E.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1CC TO MR.R.ANAND, Advocate Sr. No.68641

+1CC TO MR.B.RAJESH SARAVANAN, Advocate Sr. No. 68501

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12.06.2019

NS(CO)

TR (08.07.2019) 3P 8C