



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

Cr1.R.C. (MD) No.825 of 2013

WEB COPY

P.T.Sankar

... Petitioner/Petitioner/Complainant

Vs.

D.Mabel Bella Jeyakumari ... Respondent/Respondent/Accused(Single)

Prayer : This Criminal Revision petition is filed under Section 397 r/w 401 of Cr.P.C., to call for the entire records pertaining to the order passed by the learned Judicial Magistrate No.I, Tirunelveli, in Cr.M.P.No.8203 of 2012 in C.C.No.344 of 2013 vide his order dated 17.10.2013 and set aside the same and consequently direct the learned Judicial Magistrate not to re-summon and re-examine the witness(P.W.1) examined earlier in above said case.

For Petitioner : Mr.R.Anand

For Respondent : Mr.S.Mahalingam

ORDER

The Revision petitioner is the complainant in S.T.C. No.1358 of 2007 on the file of the learned Judicial Magistrate No.I, Tirunelveli. It is a case arising under Section 138 of the Negotiable Instruments Act. After the case was taken cognizance by the learned trial Magistrate as a summary trial case, the learned trial Magistrate took a decision to try the case as a summons case. Thereupon the complainant filed Cr.M.P.No.8203 of 2012 praying that the Court below may treat the already recorded evidence of P.W.1 as part and parcel of the case. But then, the said request was rejected vide order dated 17.10.2013 and the learned trial Magistrate decided to recall the witnesses. The said petition was dismissed by the Court below. Of course in paragraph No.10 of the order, the learned trial Magistrate observed that in order to avoid de novo trial, the case is being converted from the summary trial case to summons case. Aggrieved by the same, this Criminal Revision case has been filed.

2. Heard the learned counsel on either side.

3. Section 143 of the Negotiable Instruments Act states that the offence under Section 138 of the Negotiable Instruments Act will be tried by a Judicial Magistrate of the first class or by a Metropolitan Magistrate and the provisions of Sections 262 to 265 (both inclusive) of the said Code shall apply as far as may be. In the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of



imprisonment for a term not exceeding one year and an amount exceeding Rs.5,000/-. But then, when it appears to the learned Magistrate that the nature of the case is such that the sentence of imprisonment exceeding one year may have to be passed or that it is for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceeded to hear or rehear the case in the manner provided by the said code. Even though the case was taken cognizance as a summary trial case, the evidence of P.W.1 was taken at length and he was also cross examined at great length. Thus it is not as if, as per Section 264 of Cr.P.C., substance of the evidence alone is recorded.

4. Taking into account all these aspects, the question of eschewing the testimony already recorded will not arise at all. Hence, the Court below ought not to have dismissed the petition filed by the complainant.

5. In this view of the matter, the impugned order in this Criminal Revision is set aside. The Criminal Revision stands allowed. Since the case is of the year 2012, the learned trial Magistrate shall dispose of the main case as expeditiously as possible. No costs.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Judicial Magistrate No.I,
Tirunelveli.
2. The Section Officer,
Criminal Section, (2 COPIES)
Madurai Bench of Madras High Court, Madurai.

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