

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY :**  
**NAGPUR BENCH : NAGPUR.**

**CRIMINAL APPLICATION [APL] No. 1040/2021.**

Pravin s/o Suresh Agrawal,  
Aged about 38 years, Occupation  
Business, resident of Modi Market,  
Near Indira Gandhi Stadium,  
Gondia.

... **APPLICANT.**

**VERSUS**

1.State of Maharashtra,  
through District Government  
Pleader, Gondia.

2.Smt. Simmy wd/o Pramjeetsingh  
Chawla, Aged about 55 years,  
Occupation - Business, resident of  
c/o. Kishan Gandhi, Near Pacific Hostel,  
In front of Gujarati School, Railtoli,  
Gondia, District Gondia.

... **NON-APPLICANTS.**

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Mr. V.S. Mishra, Advocate for the Applicant.  
Mr.S.M. Ukey, Addl.P.P. for Non-applicant No.1.  
None for Non-applicant No.2 – Served.  
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**CORAM : VINAY JOSHI, J.**

**DATE : JULY 11, 2022.**

**ORAL JUDGMENT :**

Despite service, non-applicant no.2 has chosen not to appear in the matter. With consent of the learned Counsel present for the parties, the matter is taken up for final disposal at the stage of admission itself.

**Admit.**

2. The applicant has impugned herein the order dated 24.02.2020 passed by the Sessions Judge, Gondia in Criminal Revision Application No.45/2019, whereby the Sessions Court has directed the Magistrate to conduct *de nova* trial.

3. The applicant has filed Summary Criminal Case No.1207/2014 for the offence punishable under Section 138 of the Negotiable Instruments Act. The applicant has led his evidence on affidavit and also led evidence of one more witness. When the matter was posted for recording statement of non-applicant no.2 under Section 313 of the Code of Criminal Procedure, the accused has applied to the Magistrate for conducting *de nova* trial in terms of

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Section 326 of the Code. The said application was moved since the Magistrate who has recorded the evidence has been transferred and the case was assigned to another Magistrate. It was contention before the Magistrate that since it is a summary proceeding in terms of Section 147 of the Negotiable Instruments Act, it is a mandatory for the transferee Magistrate to conduct *de nova* trial. The learned Magistrate has rejected said contention, however, in revision, the learned Sessions Judge has reversed the order of the trial Court and directed to hold *de nova* trial.

4. The issue involved is covered by the decision of this Court in case of **Ganpatrao Mahadeorao Kapse .vrs. Rajiv Bhupendranath Sidhra (Criminal Application [Apl] No.175/2012 dated 10.02.2014)**, wherein this Court by relying on the decision of the Supreme Court in case of **Mehsana Nagrik Sahakari Bank Ltd. .vrs. Shreeji Cab Co. and others – 2013 (4) Crime 351 (SC)**, has ruled that if the earlier Magistrate has recorded the evidence in detail, then there is no necessity for the succeeding Magistrate to hold *de nova* trial.

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5. On perusal of the evidence, it is abundant clear that the complainant has filed his detail evidence on affidavit and he has been thoroughly cross-examined. Not only that the complainant has also examined one witness who has also been cross-examined. The record conspicuously reflects that the magistrate who has recorded the evidence has not taken mere notes of evidence, but, recorded evidence in *extenso* like summons triable case. It is evidence from the record that the evidence was recorded by in all three Magistrate and when the matter was transferred to the fourth one, at that time, the accused urged for *de nova* trial. Since the case was tried as a summons trial and the evidence is recorded in detail, the contention raised by the accused is wholly untenable.

6. In above referred case of Supreme Court in case of Mehsana Nagrik (supra), it is ruled that when the evidence during trial was recorded in full and not in a summary manner, it was not required for the successor Magistrate to record evidence *de nova*. In view of said settled position, the impugned order would not sustain in the eyes of law. The learned Sessions Judge completely erred in

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understanding the settled position of law. In view of that, the application succeeds. The impugned order dated 24.02.2020 passed by the Sessions Judge, Gondia in Criminal Revision Application No. 45/2019 is hereby quashed and set aside. The order dated 09.07.2019 passed by the Judicial Magistrate First Class, Court No.6, Gondia in Summary Criminal Case No. 1207/2014 is maintained. Criminal Application is allowed and disposed of in aforesaid terms.

**JUDGE**