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CRL.O.P.Nos.22208 & 22209 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2022

CORAM:

THE HON'BLE Ms.JUSTICE R.N.MANJULA

Crl. O.P. Nos.22208 & 22209 of 2021
and Crl. M.P. Nos.13597 & 16599 of 2021

Natesan Hari Krishnan

.. Petitioner

Versus

R.Sridhar Arasu

... Respondent

Criminal Original Petitions are filed under Section 482 of the Code of Criminal Procedure to set aside the impugned order of the trial Court passed in C.M.P. Nos.992 & 993 of 2021 in S.T.C. Nos.4182 & 4183 of 2017 on the file of the Judicial Magistrate at Thiruvottriyur and direct the Magistrate to conduct *de novo* trial in this case.

For Petitioner
(in both petitions)

:

Mr. R.Mohandoss

For Respondents
(in both petitions)

:

Mr. R.Dinesh Kumar



COMMON ORDER

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These Criminal Original Petitions are filed to set aside the order of the trial Court passed in C.M.P. Nos.992 & 993 of 2021 in S.T.C. Nos.4182 & 4183 of 2017 respectively, on the file of the learned Judicial Magistrate, Thiruvottiyur and direct the Magistrate to conduct denovo trial in the above cases.

2. The petitioner is the accused against whom the respondent has given a private complaint for the offence under Section 138 of The Negotiable Instruments Act,1881. The said case has been taken on file in S.T.C. Nos. 4182 & 4183 of 2017. During the pendency of the proceedings, petitions under Section 326(3) Cr.P.C. were filed in C.M.P. Nos.992 & 993 of 2021 before the learned Judicial Magistrate, Thiruvottiyur for conducting de-nova trial. The said petitions were dismissed. Aggrieved over the same, the present Criminal Original Petitions have been filed.



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3. The one and only contention of the learned counsel for the petitioner is that in a case where summary procedure has been adopted and if a Judge or Magistrate have heard or recorded part or whole of the evidence during the enquiry or trial, the succeeding Judge or Magistrate cannot act on the evidence so recorded by his predecessor.

4. According to Section 326 Cr.P.C. when a Judge or Magistrate heard and recorded the whole or any part of the evidence during an enquiry or a trial, the succeeding Judge or Magistrate may act on the evidence so recorded by his predecessor. However, the said procedure is not applicable to summary trials or cases in which proceedings have been stayed under Section 322 Cr.P.C. or in which proceedings have been submitted to a superior Magistrate under Section 325 Cr.P.C. For the sake of convenience Section 326 Cr.P.C is extracted hereunder:

***“326. Conviction or commitment on evidence partly recorded
by one Magistrate and partly by another:***

(1) Whenever any Judge or Magistrate after having heard and recorded the whole or any part of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein and is succeeded by another



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Judge or Magistrate who has and who exercises such jurisdiction, the Judge or Magistrate so succeeding may act on the evidence so recorded by his predecessor; or partly recorded by his predecessor and partly recorded by himself: Provided that if the succeeding Judge or Magistrate is of opinion that further examination of any of the witness whose evidence has already been recorded is necessary in the interests of justice, he may re-summon any such witness, and after such further examination, cross-examination and re-examination, if any, as he may permit, the witness shall be discharged.

(2) When a case is transferred under the provisions of this Code from one Judge to another Judge or from one Magistrate to another Magistrate, the former shall be deemed to cease to exercise jurisdiction therein, and to be succeeded by the latter, within the meaning of sub-section (1).

(3) Nothing in this section applies to summary trials or to cases in which proceedings have been stayed under section 322 or in which proceedings have been submitted to a superior Magistrate under section 325."

5. In the case on hand the complaint has been given by the complainant against the petitioner for the offence under Section 138 of the Negotiable Instruments Act. After the chief in affidavit of P.W.1/ complainant was filed and Exs.P1 to P7 were marked, the Magistrate got transferred and a new Magistrate has assumed charge. According to the learned counsel for the petitioner, the succeeding Magistrate should not act



on the evidence already recorded by his predecessor and he has to record the evidence once again from the beginning. The procedure for summary trial is contemplated under Section 260 Cr.P.C.

6. For the sake of convenience Section 260 Cr.P.C. is extracted hereunder:

260. Power to try summarily - (1) Notwithstanding anything contained in this Code—

(a) any Chief Judicial Magistrate;

(b) any Metropolitan Magistrate;

(c) any Magistrate of the first class specially empowered in this behalf by the High Court, may, if he thinks fit, try in a summary way all or any of the following offences:—

(i) offences not punishable with death, imprisonment for life or imprisonment for a term exceeding two years;

(ii) theft, under section 379, section 380 or section 381 of the Indian Penal Code (45 of 1860), where the value of the property stolen does not exceed two hundred rupees;

(iii) receiving or retaining stolen property, under section 411 of the Indian Penal Code (45 of 1860), where the value of the property does not exceed two hundred rupees;

(iv) assisting in the concealment or disposal of stolen property, under section 414 of the Indian Penal Code (45 of 1860) where the value of such property does not exceed two hundred rupees;



(v) offences under sections 454 and 456 of the Indian Penal Code (45 of 1860);

(vi) insult with intent to provoke a breach of the peace, under section 504 and criminal intimidation, under section 506 of the Indian Penal Code (45 of 1860);

(vii) abetment of any of the foregoing offences;

(viii) an attempt to commit any of the foregoing offences, when such attempt is an offence;

(ix) any offence constituted by an act in respect of which a complaint may be made under section 20 of the Cattle-Trespass Act, 1871(1 of 1871).

(2) When, in the course of a summary trial it appears to the Magistrate that the nature of the case is such that it is undesirable to try it summarily, the Magistrate shall recall any witnesses who may have been examined and proceed to re-hear, the case in the manner provided by this Code.

7. Though the Magistrate is given with the power to try a case for which the punishment does not exceed two years, it is the discretion of the Magistrate to deem it fit that the case should be tried summarily. In the case on hand, the Magistrate has adopted 'summons procedure' and not 'summary procedure' as contemplated under Section 260 Cr.P.C. The power given for the Magistrate to try summarily of certain category of the cases is with the sole object to dispose the case as early as possible.



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8. So far as the evidence under Section 138 of Negotiable Instruments Act is concerned, the Magistrate can adopt the procedure for summary trials only if the Magistrate choose to convict the accused for a term less than one year or impose a fine not exceeding Rs.5,000/-.

9. For the offence under Section 138 of the Negotiable Instruments Act, the punishment prescribed is imprisonment for a term which may extend to two years and with a fine which may extend to twice the amount of cheque or with both. Even though Section 143 of the Negotiable Instruments Act has stated that the offences falling under the Negotiable Instruments Act should be tried summarily, a restriction has been placed for imposing punishment and fine. Since the punishment under the Negotiable Instruments Act could exceed one year and the fine also could exceed Rs.5,000/-, the Magistrate has though it fit to try the case by adopting summons procedure. The choice to adopt such a procedure is well within the powers of Magistrate in view of the discretion given to the Magistrate



under Section 260 Cr.P.C.

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10. The bar to act upon the evidence of the predecessor by the succeeding Magistrate in cases where summary trial has been adopted is primarily because during the summary trial, only the substance of evidence is recorded. The procedure which is contemplated under Section 262 to 265 Cr.P.C., cannot be sufficient for trying a case falling under Section 138 of the Negotiable Instruments Act.

11. Since Section 264 Cr.P.C. prescribes recording the substance of evidence, it is thought fit that the Judge who hears the statement of a person should make its substance. Unless the succeeding Magistrate gets the opportunity to hear the complete statement of witnesses, he will not be in a position to understand its substance. Had the evidence been recorded elaborately, the succeeding Magistrate would not find any difficulty in getting the full import of the evidence.



12. The Magistrate has exercised his discretion and adopted summons procedure in view of the punishment and fine prescribed under Section 138 of the Negotiable Instruments Act. Hence the petitioner cannot claim that the succeeding Magistrate should not act upon the evidence already recorded by his predecessor. In fact in the case in hand, the complainant who was examined as P.W.1 has filed a chief-in-affidavit which is very elaborate. The predecessor magistrate has not summarised the chief in affidavit in his own language and recorded its substance. On the other hand, he had recorded the whole of the chief-in-affidavit. So the succeeding Judge cannot have any difficulty in getting the meaning of the evidence which is fully available before him. The liberty for the succeeding Judge to act upon the evidence received by his predecessor Judge is very much available to him in view of Section 326(1) Cr.P.C. for the present situation that has arisen in this case Section 326(3) is not applicable.

13. The import of Section 143 of the Negotiable Instruments Act cannot be understood in a way that the Magistrates who are dealing with the cases falling under the Negotiable Instruments Act, should only adopt



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summary trial procedure and maintain record of evidence by adopting procedure under Section 262 to 265 Cr.P.C. Since the punishment contemplated for the offences under Section 138 of the Negotiable Instruments Act is for imprisonment not exceeding two years and a fine which can be twice the amount of cheque amount, it is upto the Magistrate to adopt summons trial procedure and examine witnesses without recording the substance of their statement. The learned Magistrate has rightly dealt the above issue and had chosen to dismiss the petitions which are misconceived ones. Hence, I find no reason to interfere with the order of the trial Judge.

14. Accordingly, the Criminal Original Petitions are dismissed and the impugned order passed by the learned Judicial Magistrate, Thiruvottiyur in C.M.P. Nos.992 & 993 of 2021 in S.T.C. Nos.4182 & 4183 of 2017 is hereby confirmed. No costs. Consequently, connected miscellaneous petition are closed.

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Index: Yes/No



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Speaking order / Non-speaking order

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R.N.MANJULA, J.,

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