

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

(231)

CRM-M-8021-2018

Date of Decision: 10.01.2023

M/s Mahavir Agro Industries

...Petitioner

Versus

District Magistrate Punjab State Warehousing Corp.

...Respondent

**CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA**

Present: Mr.Umesh Aggarwal, Advocate, for the petitioner.

Mr. K.B.Raheja, Advocate, for the respondent.

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**HARKESH MANUJA, J.(ORAL)**

By way of present petition filed under Section 482 Cr.P.C., challenge has been made to an order dated 14.02.2018 (Annexure P-3) passed by the Court of Chief Judicial Magistrate, Tarn Taran, whereby, an application filed under Section 326 Cr.P.C., at the instance of petitioner has been dismissed.

The facts of the present case are that a complaint under Section 138 of Negotiable Instruments Act, 1881, came to be filed against the petitioner at the instance of respondent wherein, the petitioner was ordered to be summoned. During trial, the complaint was listed for defence evidence. Vide order dated 12.09.2017, the trial of the complaint was transferred from the Sessions Division, Amritsar to Sessions Division, Tarn Taran. As an effect of aforesaid transfer, petitioner moved an application under Section 326 Cr.P.C., seeking retrial of the complaint. The prayer made in the aforesaid application was opposed at the instance of respondent herein by filing a detailed reply to it. The Chief Judicial Magistrate, Tarn Taran, vide order

recording that the complaint was in fact been tried as a summon case and not as per the summary procedure. It is the said order dated 14.02.2018 which has been impugned by way of present petition.

Relying upon sub-Section 3 to Section 326 Cr.P.C. with the aid of a decision rendered by Hon'ble Supreme Court in case **Nitinbhai Saevatilal Shah and another Vs. Manubhai Manjibhai Panchal and another** reported as 2011(4) R.C.R. (Criminal) 148, it has been contended on behalf of petitioner that the provisions of sub-Section (1) and (2) of Section 326 Cr.P.C. were not applicable to the present case and with the transfer of trial from the Court at Amritsar to the Court of competent jurisdiction at Tran Taran, de-novo trial of the complaint was required to be conducted. Para-16 of the aforesaid judgment as relied upon by learned counsel for the petitioner is reproduced hereunder for reference:

*“16. The cardinal principal of law in criminal trial is that it is a right of an accused that his case should be decided by a Judge who has heard the whole of it. It is so stated by this Court in the decision in Payare Lal Vs. State of Punjab, AIR 1962 SC 690 : (1962 (1) Crl LJ 688). This principle was being rigorously applied prior to the introduction of Section 350 in the Code of Criminal Procedure, 1898. Section 326 of the new Code deals with what was intended to be dealt with by Section 350 of the old Code.*

*From the language of Section 326(3) of the Code, it is plain that the provisions of Section 326(1) and 326(2) of the new Code are not applicable to summary trial. Therefore, except in regard to those cases which fall within the ambit of Section 326 of the Code, the Magistrate cannot proceed with the trial placing reliance on the evidence recorded by his predecessor. He has got to try the case de novo. In this view of the matter, the High Court should have ordered de novo trial.”*

On the other hand, learned counsel for the respondent submits that even as per the order passed by the trial Court, the complaint in the present case was since being tried as a summon case and not as a summary case, exception as provided under sub-Section (3) to Section 326 Cr.P.C. cannot be made applicable and the procedure as provided under sub-Sections (1) and (2) to 326 Cr.P.C. was to be applied. In this regard, learned counsel for the respondent refers to the judgment rendered by Hon'ble Supreme Court in case of **Mehsana Nagrik Sahkari Bank Ltd. Vs. Shreeji Cab Co. and others** reported as 2014(3) R.C.R. (Criminal) 367. The relevant para No.5 of the same is reproduced below for reference:

*“5. 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 **Nitinbhai Saevatilal Shah & Anr. Vs. Manubhai Manjibhai Panchal & Anr., (supra) be followed.”***

I have heard learned counsel for the parties and gone through the paper book. I am unable to accept the contention raised on behalf of the petitioner.

On a cumulative reading of the record, one can see that the complaint under Section 138 of Negotiable Instruments Act in the present case

was tried by Court below as a summon case. Specific mention to this effect has been made by the trial Court while passing the impugned order which fact has not been rebutted at the instance of present petitioner and nothing contrary to it has been produced on record, thus, once the complaint in the present case was tried as a summon case, the plea raised at the instance of petitioner-counsel as regards de-novo trial by placing reliance upon sub-Section (3) to Section 326 Cr.P.C. cannot be accepted in the facts and circumstances of the present case and in view of the reasoning recorded hereinabove, the judgment passed in **Nitinbhai (supra)** would not apply to the facts and circumstances of the present case where as the judgment passed in case of **Mehsana Nagrik Sahkari Bank Ltd. (Supra)** as relied upon by the learned counsel for respondent applies to the facts of the present case. It may also be pointed out here that in case of denial of issuance of cheque or signatures on it or showing that no legally enforceable debt or liability exist to invoke Section 138 of the Negotiable Instruments Act, proper chance of defence has to be given as such there is no bar to try the complaint as a summon case.

Accordingly, I do not find any illegality or infirmity in the impugned order dated 14.02.2018 (Annexure P-3) passed by learned CJM, Tarn Taran, and thus, the same call for no interference. As such, the present petition is dismissed with no orders as to costs.

Pending applications, if any, shall stand disposed of.

**(HARKESH MANUJA)**  
**JUDGE**

**10.01.2023**  
anil

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No