

Sumedha Vs. Krishnakumar

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Court : Mumbai Aurangabad

Decided On : Apr-11-2014

Judge : A.I.S. Cheema

Appeal No. : Criminal Application No. 6614 of 2013

Appellant : Sumedha

Respondent : Krishnakumar

Judgement :

Oral Judgment:

1. The learned counsel for Respondent accepted that costs, as directed by this Court on the last occasion, has been received.
2. Heard learned counsel for the Applicant and learned counsel for Respondent, finally.
3. Learned counsel for the Applicant submitted that in this matter, criminal complaint S.T.C. No.2256 of 2009 is pending before the Judicial Magistrate, First Class, Court No.6 at Latur. The matter is under Section 138 of the Negotiable Instruments Act. The Judicial Magistrate on 7th February, 2013 passed order that the trial of the case shall proceed de-novo, as evidence recorded in the matter earlier, was by another Magistrate. The learned counsel submits that in the Revision filed by the present Respondent (original complainant) being Criminal

Revision No.10 of 2013, the Sessions Court has erroneously held that the evidence recorded in the matter is not as per summary trial. According to the learned counsel, the trial Court had relied on the Judgments of the Hon'ble Supreme Court and rightly held that the trial needs to be de-novo, but the Sessions Court wrongly held that the evidence was not recorded as per the procedure prescribed for summary trial. According to the learned counsel, although the observations of the Sessions Court show that cross-examination of complainant was running into 15 pages and that cross-examination of accused/Applicant herself was running into 20 pages, still according to the counsel, only by referring to how-many pages the cross-examination was, will not indicate that it was not notes of evidence.

4. Learned counsel for Applicant/original accused relied on the case of **Nitinbhai Saevatilal Shah and another vs. Manubhai Manjibhai Panchal and another, reported in A.I.R. 2011 S.C. 3076** and the case of **R. Vijayan vs. Baby and another, reported in A.I.R. 2012 S.C. 528**, to claim that under the Negotiable Instruments Act, as per Section 143, the procedure applied is summary and thus keeping in view the Judgments of the Hon'ble Supreme Court, referred above, the order of the Magistrate has been wrongly set aside by the Sessions Court.

5. Learned counsel for Respondent relied on the case of **MehsanaNagrik Sahkari Bank Ltd. vs. Shreeji Cab Co. and others, 2014(1) Bankmann 3 (S.C.)**, to submit that the Hon'ble Supreme Court has recently held that if perusal of the notes of evidence shows that the evidence was recorded in full and not in summary manner, de-novo trial need not be ordered.

6. I have gone through the orders passed by the Court of Judicial Magistrate First Class as well as Sessions Court. The observations of the Sessions Court in Para 11 and 12 are as under:-

œ11. A bare perusal of the record and proceeding would make it clear that the cross-examination of the complainant runs into 15 pages and it was completed in three sittings. The complainant tendered his affidavit in lieu of examination-in-chief on 8.3.2010 and his cross-examination was completed on 19.10.2011. Thus, the period of 01 year and 4 months was consumed for recording of the evidence of the

complainant. The cross-examination of witness Mallikarjun Khanapure examined by the complainant, shows that the substance of his evidence is not recorded but his evidence has been recorded in verbatim. Besides this, the accused examined herself on oath and her cross-examination runs into 20 pages and it was completed in 7 sittings. The perusal of the evidence of witness No.2, examined by the accused, also shows that his evidence has been recorded in verbatim.

12. Thus, it is evident that the procedure prescribed for summary trial, is not applied by the Magistrate, who recorded the evidence. On the other hand, the learned Magistrate recorded the evidence of the witnesses in verbatim. As such, it is not possible to hold that the trial of the accused, for the offence, punishable under Section 138 of N.I. Act, is a summary trial. On the other hand, the case, pending against the accused, is tried as a Regular Criminal Case.?

7. The observation that case is tried as Regular Case needs to be read appropriately. The wordings in Section 242(3) dealing with Warrant Cases (tried as Regular Cases) and wordings in Section 254(1) dealing with Summons Cases, in Code of Criminal Procedure, 1973, regarding recording of evidence are similar, requiring the Magistrate "to take all such evidence as may be produced in support of the prosecution". Thus, even in Summons Case the evidence would be in full. Looking to the other observations of the Sessions Court, it is clear that the evidence has been recorded in all details and such evidence cannot be treated as substance of evidence under Section 264 of Code of Criminal Procedure, 1973. In the matter of **Indo Rama Synthetics (I) Ltd. vs. HRK Infra and Oils and others, reported in 2012(8) LJSOFT 58**, and in the matter of **DineshThacker vs. State of Maharashtra and another, reported in 2013(3) LJSOFT 206**, the Judgments of this Court, it has been held that although offence punishable under Section 138 of the Negotiable Instruments Act can be tried as summary case, if the evidence recorded is full-fledged evidence, de-novo trial is not necessary. In the matter of "**DineshThacker**" (supra), the Judgment in the matter of **NitinbhaiSaevatilal Shah** (supra) was referred to but this Court considering facts of that matter, found that the case had not been tried as summary case and in fact it was tried as a regular summons case and thus Order of rejection of application of accused for de-novo trial, was maintained.

8. In the latest Judgment of the Hon'ble Supreme Court in the case of **Mehsana Nagrik Sahkari Bank Ltd.** cited supra, High Court had directed de-novo trial. In the Hon'ble Supreme Court the Judgment in the matter of "**Nitinbhai Saevatilal Shah**" (**supra**) was relied on to support Order of High Court. Senior Advocate Mr. Huzefa Ahmadi pointed out the evidence to submit that in fact, the evidence had not been recorded in a summary manner. Hon'ble Supreme Court observed in Para 6 of the Judgment, as under:

œ6. 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.?

9. In the present matter also, looking to the observations of the Sessions Court regarding the manner in which the evidence was recorded, I do not find error with the observations of the Sessions Court which are to the effect that evidence was recorded in full. The evidence recorded is in full, like in Summons Case.

10. The Judgment passed by the Sessions Court was in Criminal Revision. Present Application moved is under Section 482 of the Code of Criminal Procedure. I do not find that there is any error of law pointed out, on the face of record. I do not find any reason to invoke inherent jurisdiction of this Court to interfere in the order passed by the Sessions Court.

11. For the reasons stated above, present Application is rejected with costs of Rs.3000/- (Rupees Three Thousand).

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