
(2014) 12 KL CK 0053
In the High Court Of Kerala
Case No : Crl.Rev.Pet. No. 526 of 2014

Abdul Rahim

APPELLANT

Vs

A.T. Venugopalan

RESPONDENT

Date of Decision : 12-12-2014

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138, 143

Citation : (2014) 12 KL CK 0053

Hon'ble Judges : K. Ramakrishnan, J

Bench : Single Bench

Advocate : Sunny Mathew, Advocate for the Appellant; S. Gopakumaran Nair, Sr. Adv., A. Rajasimhan and B. Prasanth, Advocate for the Respondent

Judgement

K. Ramakrishnan, J.—Complainant in S.T. No. 360/2003 on the file of the Judicial First Class Magistrate Court, Pattambi and first respondent in Crl.Appeal No. 31/2006 of Additional Sessions Judge, Palakkad is the revision petitioner herein.

2. The revision petitioner filed a private complaint against the first respondent herein alleging offences under Section 138 of the Negotiable Instruments Act (hereinafter called "the Act") and after complying with the procedure, it was taken on file as S.T. No. 360/2003 by the learned magistrate. After evidence, the first respondent was found guilty under Section 138 of the Act and he was convicted and sentenced. Against which, first respondent herein filed Crl.Appeal No. 31/2006 before the Sessions Court, Palakkad which was made over to Additional Sessions Court, Palakkad for disposal. The learned Additional Sessions Judge, by the impugned judgment, relying on the decision of this court in Kanakarajan Vs. Vipin, observed that the court has not recorded a reason for converting the case to summons trial case to record elaborate evidence and not following the procedure will vitiate the entire trial of the case and set aside the order of conviction and sentence and remanded the case for de novo trial as mentioned in Kanakarajan's case (supra). That is being challenged by the first respondent - complainant in the lower court by filing the above revision.

3. Heard both sides.

4. The Counsel for the revision petitioner Shri. Sunny Mathew submitted that, in view of the dictum laid down in the decision reported in *Baharuni J.V. and Another Vs. State of Gujarat and Another*, 2014 (4) KHC 476 (SC)], Kanakarajan's case (supra) is no longer good law and the order passed by the court below is liable to be set aside and the Additional Sessions Judge has to be directed to dispose of the case on merit. Further, proviso to Section 143 of Negotiable Instruments Act only gives an option for the magistrate to convert the summary trial into summons trial only if he feels that, sentence has to be imposed for more than one year. In this case, the sentence imposed is not more than one year. So, the above decision is not applicable.

5. On the other hand, the learned Senior Counsel Dr. S. Gopakumaran Nair appearing for the first respondent argued that, when a procedure has been provided, the courts are bound to follow the procedure and even the latest Supreme Court decision only says that in order to avoid delay of pending matters merely because, without recording any reason summons trial procedure has been followed, it need not be mechanically ordered to conduct de novo trial. But, in this case, no such prejudice would be caused because, the appellate court had directed the trial court to dispose of the case within three months. So, no illegality has been committed by the court below. Further, as on the date of the judgment, the law on that aspect is that, if no reasons have been stated for converting the case from summary trial to summons case, the procedure is vitiated and that is liable to be set aside.

6. It is an admitted fact that the revision petitioner had filed a private complaint against the first respondent herein alleging commission of the offence under Section 138 of the Negotiable Instruments Act. It is also an admitted fact that the case was taken on file as S.T. No. 360/2003. But, it will be seen from the judgment of the appellate court that, though it was taken as summary trial case, the procedure adopted by the court below is as that of the summons case and elaborate evidence was taken without assigning a reason as provided under proviso to Section 143 of the Negotiable Instruments Act. The appellate court also relied on the decision reported in Kanakarajan's case (supra) in which, a Single Judge of this court has observed that, if the magistrate wants to change over to the procedure of the trial from summary trial to summons case, then, as provided under the proviso to Section 143 of the Negotiable Instruments Act, specific reason has to be mentioned and if it is not mentioned, it will vitiate the trial of the case and in such cases, the decision of the Supreme Court in *Nitinbhai Saevatilal Shah and Another Vs. Manubhai Manjibhai Panchal and Another* [2011 (3) KHC 840 (SC)] will be applicable. But, later decision of the Supreme Court in *Baharuni J.V. and Another Vs. State of Gujarat and Another*, 2014 (4) KHC 476 (SC)] has considered all the decisions on this aspect and also the provision of the Negotiable Instruments Act namely, 143 of the Act and observed in paragraph 44 of the judgment that, there is no straight jacket formula to try the cases falling

under the Negotiable Instruments Act. The law provided therefore is so flexible that it is up to the present prudent judicial mind to try the case "summarily" or otherwise. No doubt, the second proviso to Section 143 of the Act specifies that in case, the Magistrate does not deem the case fit to try summarily, he shall record an order to that effect after hearing the parties. Just because this directive is not followed scrupulously by the Trial Court would itself not vitiate the entire trial and the Appellate Court should not direct for a de novo trial merely on the ground that the Trial Court had not recorded the order for not trying the case summarily. Further, in paragraph 61 of the judgment, the Supreme Court has given guideline as to how the pending cases has to be considered and in future, how this will have to be dealt with which reads as follows:

61. However, to summarise and answer the issues raised herein, following directions are issued for the Courts seized off with similar cases:

1. All the subordinate Courts must make an endeavour to expedite the hearing of cases in a time bound manner which in turn will restore the confidence of the common man in the justice delivery system. When law expects something to be done within prescribed time limit, some efforts are required to be made to obey the mandate of law.

2. The learned Magistrate has the discretion under Section 143 of the NI Act either to follow a summary trial or summons trial. In case the Magistrate wants to conduct a summons trial, he should record the reasons after hearing the parties and proceed with the trial in the manner provided under the second proviso to Section 143 of the NI Act. Such reasons should necessarily be recorded by the Trial Court so that further litigation arraigning the mode of trial can be avoided.

3. The learned Judicial Magistrate should make all possible attempts to encourage compounding of offence at an early stage of litigation. In a prosecution under the Negotiable Instruments Act, the compensatory aspect of remedy must be given priority over the punitive aspect.

4. All the subordinate Courts should follow the directives of the Supreme Court issued in several cases scrupulously for effective conduct of trials and speedy disposal of cases.

5. Remitting the matter for de novo trial should be exercised as a last resort and should be used sparingly when there is grave miscarriage of justice in the light of illegality, irregularity, incompetence or any other defect which cannot be cured at an appellate stage. The Appellate Court should be very cautious and exercise the discretion judiciously while remanding the matter for de novo trial.

6. While examining the nature of the trial conducted by the Trial Court for the purpose of determining whether it was summary trial or summons trial, the primary and predominant test to be adopted by the Appellate Court should be whether it was only the substance of the evidence that was recorded or whether

the complete record of the deposition of the witness in their chief examination, cross-examination and re-examination in verbatim was faithfully placed on record. The Appellate Court has to go through each and every minute detail of the Trial Court record and then examine the same independently and thoroughly to reach at a just and reasonable conclusion.

7. In that case also, detailed evidence was taken and it went up to the High Court. When the case came up in the High Court for hearing, relying on Nitinbhai Saevatilal Shah's Case (supra), the High Court found that, since no special reason has been recorded for converting the trial from summary trial to summons case, the trial is vitiated and set aside the judgment of the trial court and ordered de novo trial and that was considered by the Supreme Court and observed that, the procedure adopted by the High Court is not proper as the High Court ought to have considered as to whether the evidence taken was in the form of recording substance of evidence or detail evidence by recording verbatim reproduction of the deposition given by the witnesses. If the later course was adopted, then, the High Court should have observed that, the summons case procedure has been followed and should have disposed of the case on merit instead of remanding the case to the court below for de novo trial as de novo trial can be ordered only in extreme cases where prejudice has been caused to the parties on account of procedure adopted by the courts. So, the same principle will apply in this case also. The evidence has been recorded elaborately and on account of recording elaborate evidence, no prejudice has been caused to the parties as well. So, under the circumstances, the order passed by the Additional Sessions Judge, relying on the decision reported in Kanakarajan's case (supra) which is not good in law in view of the dictum laid down by the Supreme Court in Baharuni J.V's case (supra) is liable to be set aside as it is unsustainable and it has to be sent back to the court below for fresh disposal in accordance with law.

So, the order passed by the court below in CrI.Appeal No. 31/2006 of Additional Sessions Judge, Palakkad setting aside the order of conviction and sentence in S.T. No. 360/2003 of Judicial First Class Magistrate Court, Pattambi and remanding the case for de novo trial is set aside and the matter is remitted to the Additional Sessions Court, Palakkad for fresh disposal in accordance with law on the basis of the evidence available and after considering the contentions raised by the parties in accordance with law. Parties are directed to appear before the court below on 19.01.2015 and the Additional Sessions Judge is directed to expedite disposal of the case as expeditiously as possible at any rate before the courts closes for summer vacation.

Office is directed to communicate this order to the concerned court immediately.