

(2018) 06 KAR CK 0004
In the Karnataka High Court
Case No : Criminal Petition No. 928 of 2018

Mahendra Kumar @APPELLANT@Hash Gangamma.B

Date of Decision : 05-06-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 259, 262, 265, 482
Negotiable Instruments Act, 1881 — Section 138, 143, 145

Citation : (2018) 06 KAR CK 0004

Hon'ble Judges : K. N. PHANEENDRA, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. The petitioner approached this Court calling in question the orders passed by the 66th Addl. City Civil and Sessions Judge, Bengaluru in

Crl.R.P.674/14 in setting- aside the orders passed by the 12th Addl. ACMM, Bengaluru under Section 259 Cr.P.C. dated 31.05.2017 in

C.C.No.32891/14 and directing the learned Magistrate to convert the case in to a warrant case, though the proceedings are under Section 138 of the

Negotiable Instruments Act (for short "the Act").

2. Though Section 259 of Cr.P.C. is not strictly applicable but Section 143 of the Act empowers the Magistrate even to try the offence under Section

138 of the Act as if a warrant case, if any case is made out under Section 143 of the Act.

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3. Learned counsel for the petitioner has relied upon a decision of this court in Criminal petition No. 8943/2010 where in this court has observed at

page 74 that,

"Section 143 has a mandatory effect though the provision opens with a non

obstante clause. This means that provisions of Section 259 of Cr.P.C.

regarding a warrant trial shall have no application in respect of an offence under Section 138 of the NI Act. There is no room for doubt that for the

purposes of trial of an offence falling under the Act, the provisions of a summary trial under the Code would be applicable and a summary trial cannot

be converted into a trial for a warrant case. The evidence adduced by the parties could be by way of affidavits under Section 145 of the Act.â??

4. In another reported ruling of this Court in M/s LEO GRANEX vs M/s PAVILLION GRANITES AND OTHERS reported in ILR 2009 Kar. 4062,

this Court has very lengthily discussed with regard to the application of Section 259 and also Section 143 of the Act. At Head Note (b) the Court has

expressed as under:

â??Section 259 â?" Power of Court to convert summons cases into warrant cases
â?" Application â?" Order of the Trial Court converting a

summons case into a warrant case while dealing with an offence under Section 138 of the Negotiable Instruments Act â?" Revision against â?"

HELD, If the provision of Section 259, Cr.P.C. is applied, then the power conferred on the Magistrate is exercisable â??during the course of Trialâ?,

whereas by virtue of the second proviso to Section 143 of the Negotiable Instruments Act, power conferred is exercisable by the Magistrate even

â??at the commencement of trialâ?. â?" FURTHER HELD, From the gamut of the provisions of Cr.P.C. and of Section 143 of the Act, it is clear

that, the Magistrate has been give a free hand to decide which procedure has to be applied and such decision shall depend on the nature of charge in a

case relating to offences under Indian Penal Code and the nature of charge as also dispute between the parties in an action under Section 138 of the

N.I.Act. â?" In a case relating to prosecution under Section 138 of the Act, particularly when the stakes are high and the accused intends to establish

that the dispute is of civil nature or that there was no existing debt or legal liability, he may have to rely on certain documents and witnesses to

substantiate his defense. The scope of enquiry therefore, becomes enlarged and the Magistrate has to weigh defense evidence against prosecution

evidence. If summary procedure is applied, it is likely that the accused may not get full opportunity and ultimately fail in substantiating his defense. â?"

The accused had made out a case for grant of relief sought for and the decision

to try the case as warrant case is fully justifiedâ??.

5. In this background, before advertng to the factual aspects of the case, it is just and necessary to have a birds eye view of Section 143 reads:

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under this Chapter shall be tried by a Judicial

Magistrate of the first class or by a Metropolitan Magistrate and the provisions of Sections 262 to 265 (both inclusive) of the said Code shall, as far as

may be, apply to such trials:

Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of

imprisonment for a term not exceeding one year and any amount of fine exceeding five thousand rupees:

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the

nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason,

undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness

who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code.

(2) The trial of a case under this section shall, so far as practicable, consistently with the interests of justice, be continued from day to day until its

conclusion, unless the Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded in writing.

(3) Every trial under this Section shall be conducted as expeditiously as possible and an endeavour shall be made to conclude the trial within six

months from the date of filing of the complaint.

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6. On a plain reading of this particular provision, of course a special procedure is contemplated to conduct the case under Section 138 of the Act. The

provision of Sections 262 to 265 Cr.P.C. both inclusive have to be applied by the Magistrate for the purpose of dealing with the offence under Section

138 of the N.I.Act for holding summary trial under the above said provisions. But, if the summary trial is conducted, it shall be lawful for the

Magistrate to pass a sentence of imprisonment for a term not exceeding one year

and an amount of fine not exceeding Rs.5000/-. The 2nd proviso appended to Section 143 clearly empowers the Magistrate under peculiar circumstances of a case to try the said offence as a warrant case. This proviso clearly indicates that, if it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that, it is for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code. That means, it is clear that even during the course of trial, even at the time of recording of evidence, or after conviction judgment if the Magistrate is of the opinion that a sentence of imprisonment for a term exceeding one year has to be imposed, then he cannot try the said case summarily and dispose it off. He has to give reasons and then recall any witness who may have been examined, for the purpose of rehearing the matter, as if a warrant case.

Â The second circumstance is applicable at the initial stage where the Magistrate is of the opinion that on perusal of the entire materials on record if the Magistrate is of the opinion that the nature of the case is such that it is undesirable to try the case summarily, then also the Magistrate can give reasons as to why it is undesirable to try the case summarily and by giving reasons, he can try the offence as a warrant case by passing appropriate orders. Therefore, it is crystal clear from the statute, that Section 259 of Cr.P.C. is not in a straight jacket manner strictly applicable so far as Section 138 proceedings are concerned.

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Â However, when there is a special statute which provides a special provision empowering the Magistrate to convert a summary case into a warrant case under the peculiar circumstances of the case, then such provisions can be invoked by the accused in an appropriate case seeking the indulgence of the Magistrate to try the said offence, as a warrant case by framing the charges. Therefore, it is crystal clear from the statute itself that the Magistrate is fully empowered to pass appropriate orders depending upon the facts and circumstances of each case.

7. Now let me consider whether the learned Sessions Judge has appropriately

passed the order in this regard.

Â At paragraph 3 of the Judgment in CrI.R.P.674/2017, it is stated by the learned Sessions Judge that in this particular case though it is merely a

cheque bounce case, apart from cheque bounce case there are some other civil litigations also pending between the parties i.e., complainant and the

accused. Therefore, it is urged, that, for eliciting truth lengthy trial is required. By conducting this case as a summary trial case, this Court find that trial

court may pronounce judgment in this case hurriedly which will end in denial of justice. It is also observed that no prejudice will be caused to any

parties because court has to separate grain from chaff during the course of trial. Therefore, when there are mixed questions of law and fact and

existence of civil litigation as well as serious question both on legal and factual aspects have to be tried, it is fair to try the offence as if a warrant

case. Therefore, the Sessions Court has set-aside the order passed by the learned Magistrate and permitted the learned Magistrate to try the said case

adopting procedure of warrant trial.

8. It is evident from the materials placed by the learned counsel for the respondent that at the initial stage itself, he has questioned the order of taking

cognizance passed by the learned Magistrate, before this Court in CrI.P.No.56/15. Wherein this Court has observed that, the petitioner/accused in the

said case has taken up the plea that the complainant is an imposter and he had obtained the dishonoured cheques under fraudulent circumstances and

cheques are not supported by consideration and they were not issued to discharge any legally recoverable debt or liability. Having appreciated the said

fact, this Court was of the opinion that the said factual aspects and controversies raised by the parties cannot be decided in a petition filed under

Section 482 Cr.P.C., but the facts will have to be resolved before the trial Court. Therefore, it goes without saying that the accused has taken up the

contention that the identity of the complainant itself is in question and he is an imposter and he has obtained the dishonoured cheques by playing fraud

and cheques were not supported by any consideration. Though, these defences can also be taken in a summary trial but as rightly observed by the

learned Sessions Judge that the disputed facts require some lengthy evidence and appreciation by the Court, therefore providing sufficient opportunity

to the parties is on absolute requirement. If it is a summary proceeding, such

lengthy trial cannot be conducted. Therefore, in my opinion when the parties are quarrelling each other by means of civil litigation as well as when fraud is alleged and accused has already laid foundation, while challenging the cognizance order itself, in my opinion, the Sessions Judge is right in exercising the power holding that it is undesirable to proceed with the summary proceeding to conduct the trial of the case of the complainant under Section 138 of the Act.

9. Under the above said circumstances, as I have already stated that, the said procedure cannot be invariably applied in all the cases but it all depends upon the facts and circumstances of each case where the Magistrate requires and is of the opinion that it is undesirable to proceed with the matter in a summary proceeding if it is a cumbersome proceeding, depending upon the complexity of the case the Magistrate can take appropriate support of Section 143 of N.I.Act to convert the summary case into a warrant case.

10. In this particular case, as I have already noted that the learned Sessions Judge though in a very cryptic manner stated that a lengthy trial is required, in my opinion, the other surrounding circumstances as noted above, also do establish that a lengthy trial is required. In the above said circumstances, I do not find any strong reasons to interfere with the orders passed by the learned Sessions Judge. Hence, the Criminal Petition is liable to be dismissed. Accordingly dismissed.

11. The parties are directed to appear before the trial Court and it is directed that the learned Magistrate as the matter is pretty old, has to take up the matter and dispose of the case as expeditiously as possible, with the assistance of the parties