

(2014) 11 KL CK 0031

In the High Court Of Kerala

Case No : Crl. R.P. Nos. 1572, 1573 and 1574 of 2012

Padmanabhan M.

APPELLANT

Vs

K. Latha Kumari

RESPONDENT

Date of Decision : 26-11-2014

Acts Referred:

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

Citation : (2014) 4 KHC 894

Hon'ble Judges : K. Ramakrishnan, J

Bench : Single Bench

Advocate : P. Vijaya Bhanu, Senior Advocate and R. Gopan, Advocate for the Appellant; N. Suresh, Public Prosecutor and Pirappancode V.S. Sudhir, Advocate for the Respondent

Judgement

K. Ramakrishnan, J.—The complainants in ST Nos. 55/2007, 56/2007 and 57/2007 on the file of Judicial First Class Magistrate Court-I V, Neyyattinkara are the revision petitioners herein. The revision petitioners filed separate private complaints under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the Act) against the first respondent in all these cases alleging the offence under Section 138 of the Act. The case was numbered as summary trial case and evidence was taken and after evidence, the Trial Court found the accused in these cases, who are the first respondent in all these cases, guilty under Section 138 of the Act and convicted them and sentenced them for the said offence. They filed Crl.A. Nos. 108/2011, 109/2011 and 110/2011 respectively against the above said conviction and sentence and after admitting the appeal, it was made over to Second Additional Sessions Court, Thiruvananthapuram for disposal. While the cases were posted for hearing, the revision petitioners filed Crl. MP Nos. 654/2012, 655/2012 and 656/2012 respectively in each appeal stating that in view of the decision reported in Nitinbhai Saevatilal Shah and Another Vs. Manubhai Manjibhai Panchal and Another, , if the Court feels that the case has to be remanded, then it may be remanded with direction of time bound disposal by the Court below. It was on

that basis, the learned Additional Sessions Judge disposed of the criminal appeals and remanded the case for fresh disposal to the Court below by the impugned common order. That common order is being challenged by the revision petitioner by filing the above revisions.

2. Heard the counsel appearing for the revision petitioner, learned counsel appearing for the 1st respondent and the learned Public Prosecutor.

3. Since a common question arose for consideration in all these cases, this Court felt that the revisions can be disposed of by a common order.

4. The learned Senior Counsel Sri. Vijaya Bhanu appearing for the revision petitioner submitted that in the latest decision in *Baharuni J. V. and Another v. State of Gujarat and Another*, 2014 (4) KHC 476 : 2014 (2) KLD 884 : 2014 (11) SCALE 200, the Hon"ble Supreme Court has held that if the Appellate Court is satisfied that though the case was numbered as summary trial case, if detailed evidence was taken after conducting detailed enquiry, it can be treated that the Court has decided the case as summons case though separate order has not been passed converting summary trial case to summons case and if the Court is satisfied that summons case procedure has been followed, then it need be remanded in view of the decision reported in *Shah's case* (cited supra). Further direction has been given as to the cases will be decided and future guideline has to be given in such circumstances. It cannot be said that the counsel for the revision petitioner had sought for remand voluntarily and what was stated by him in the petition was that he wanted only early disposal, if it is remanded on the basis of the decision. In view of the latest decision of the Hon"ble Supreme Court on this aspect, remand is not required. So the order has to set aside and a direction has to be given to the Appellate Court to dispose of the case on merit.

5. On the other hand, Sri. Pirappancode V.S. Sudheer, learned counsel for the first respondent submitted that it was not a case of remanding the case, but remand order was sought on the basis of the application filed by the counsel for the revision petitioner in the lower Court and in the affidavit filed by him, he later deviated from the same blaming the Court for remanding the case and filing revision cannot be entertained and if at all he feels that a mistake has been committed, he will have to move for correcting it before the same Court not filing revision. He had relied on the decision reported in *State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another*, and *D.P. Chadha Vs. Triyugi Narain Mishra and Others*, in support of his case.

6. Heard the Public Prosecutor also.

7. It is an admitted fact that the revision petitioner herein as complainant filed three complaints before the Judicial First Class Magistrate Court-IV, Neyyattinkara against the first respondent in these cases alleging commission of the offence under Section 138 of the Act and those cases were taken on file as ST Nos. 55/2007, 56/2007 and 57/2007 to make it appear that it was decided to be tried as summary trial case as provided under Section 143 of the Act as it was

provided in the Act that the cases will be tried summarily by the Magistrate. It is also an admitted fact that detailed evidence was recorded by examining the witnesses and the evidence was recorded in verbatim reproduction of the evidence and no substance of the evidence is required to be recorded by the Presiding Officer if he is following the procedure for deciding case as summary trial case. Further, proviso to Section 143 says that in case of any conviction, 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 improvement 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. So option has been given to the Magistrate to convert summary trial case to summons trial case to record detailed evidence if the Magistrate is satisfied or he has got reason to believe that on conviction sentence may go beyond one year on considering the nature of case, detailed evidence will have to be recorded, then after recording reasons he can convert to the procedure of summons trial case from summary trial case.

8. In the decision reported in Shah's case (cited supra) the Hon''ble Supreme Court has held that in cases tried summarily, when a Presiding Officer is transferred, then the successor officer cannot proceed with the trial with the evidence recorded by his predecessor but he will have to conduct a de novo trial. The reason stated in that decision was that if the substance of the evidence alone was recorded by the Magistrate, then successor officer will not be knowing the mind of the person who recorded the evidence and it is not safe to proceed with the case on such evidence recorded by his predecessor and that may cause prejudice to the parties without going into the question as to whether if evidence was recorded elaborately, even then the same procedure will have to be adopted or not. But the latest decision of the Hon''ble Supreme Court in Baharuni, J. V.'s case (cited supra) considered all these aspects in detail and gave certain guidelines as to how the cases to be decided in such cases in paragraph 61 of the judgment 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."

9. In that case, the Hon''ble Supreme Court had considered the manner in which evidence was recorded in those cases, the order of High Court simply remanding the case relying on the dictum laid down in the decision in Shah's case cited supra) was set aside and remanded the case to the High Court to consider the evidence and pass appropriate orders on merit.

10. In this case, admittedly evidence was recorded in detail and on going through the petition filed by the counsel for the revision petitioner, it appears that at the time when the hearing was going on probably in view of the dictum laid down in the above mentioned case, the remand ought to have been expected from the appropriate Court. Under such circumstances, the words made by the counsel for the petitioner are very relevant. It was mentioned in the petition that if the Court feels that in view of the dictum laid down by the Supreme Court, the matter has to be remanded, then it may be remanded with a direction to the Court below to expedite the trial by time bound manner. So, it cannot be said that it is an out right seeking for remand made by the revision petitioner as contended by the counsel for the first respondent.

11. It is true in the decision relied on by the counsel for the 1st respondent namely State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another, and D.P. Chadha Vs. Triyugi Narain Mishra and Others, , the Hon"ble Supreme Court has deprecated the practice of lawyers making concession before the Courts below for getting favourable order and thereafter coming to the higher Court and blaming subordinate Court for making such orders by filing affidavits and statements stating that such statements has not been made by them. It is observed by the Supreme Court that there is duty cast on the lawyers to ascertain as to whether their statements are likely to cause prejudice to their clients before making such statements. The lawyers are supposed to the officers of the Court. They are expected to help the Court in arriving at right decision. With that view, the Supreme Court has deprecated the practice of filing affidavit by the lawyers stating that the Judge has not done in a particular way and things have not been done as stated by the lawyer in that way as mentioned in the order after the orders have been passed after recording such statements. In this case, in view of the discussions made above and also the words cleverly made by the counsel appearing in the lower Court also will go to show that if the Court feels that if the cases to be remanded in view of the dictum, he wants early disposal of the case. Further it is settled law that merely because parties conceded for remand, the Court is not expected to remand the case on that concession made by the counsel for the parties. The Court will have to consider whether remand is really required for getting ends of justice. But in this case it appears that when such an application is made before the Court below, simply relying on the petitions filed and decisions of the Supreme Court, remanded the case. In view of the dictum laid down in the decision reported in Baharuni J. V.'s case (cited supra), this Court feels that if evidence is recorded in detail reproducing the evidence given in verbatim reproduction of the statement given by the witnesses and not recording substance alone, then Court can treat the case tried as summons trial case and not decided as summary trial case and the Appellate Court on the basis of the evidence proceed and dispose of the case in accordance with law. So in view of the dictum laid down in the above decisions as the procedure to be followed in future, this Court feels that the order passed by the Court below remanding the case appears to be unsustainable in law and the same is liable to be set aside and the matter has to be remanded to the Appellate Court to consider afresh in accordance with law taking into account the principles laid down in the decision reported in BaharuniJ. V's case cited supra) and dispose of the case on merit in accordance with law. So the revisions are allowed and the common order passed by the Court below remanding the case are set aside and the matters are remanded to the Additional Sessions Court for fresh disposal in accordance with law on the basis of the principle laid down in BaharuniJ. V's case (cited supra). Parties are directed to appear before the Court below on 18/12/2014. Considering the fact that the cheque is of the year 2007 and the appeal was of the year 2011 the Additional Sessions Judge is directed to expedite the disposal of the case as early as possible before the Court closes for summer vacation.

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