
(2013) 07 BOM CK 0193

In the Bombay High Court

Case No : Criminal Writ Petition No. 50 of 2013

Ramesh Meharam Rathod

APPELLANT

Vs

Hansraj Kaniram Jadhao

RESPONDENT

Date of Decision : 09-07-2013

Acts Referred:

Citation : (2013) ALLMR(Cri) 3392 : (2014) 2 BC 187

Hon'ble Judges : P.D. Kode, J

Bench : Single Bench

Advocate : H. Dhumale, for the Appellant; R.S. Kurekar, for the Respondent

Judgement

P.D. Kode, J.—Rule. Rule returnable forthwith. Heard finally by consent of the parties. By this petition under Article 227 of the Constitution of India, the petitioner had challenged order dated 24.11.2011 in Summary Criminal Case No. 2535/3008 passed by J.M.F.C. Court No. 4, Pusad ordering de novo trial in view of the decision of the apex Court in the case of Nitinbhai Saevatilal Shah and Another Vs. Manubhai Manjibhai Panchal and Another, .

2. The said case initiated upon a complaint made by the respondent on the accusation of the petitioner having committed an offence u/s 138 of the Negotiable Instruments Act in view of the cheque for the debt given by him to the respondent having bounced and thereafter the petitioner had failed to pay the demanded amount within the statutory period, in spite of service of demand notice upon him by the respondent.

3. Mr. Dhumale, learned counsel for the petitioner, by taking through the decision relied upon by the trial court while passing the order of de novo trial, submitted that the ratio of the said judgment in term reveals that the apex court ordered accordingly in said case as the Magistrate presiding over the court and trying the case in summary way, was changed during the midst of the hearing. The learned counsel was very much right in submitting that in the said decision the apex court ordered de novo trial in view of the succeeding Magistrate being not

competent to continue with the case upon the evidence partly recorded by his predecessor as amongst others, the provisions section 326 of the Cr.P.C. were expressly not made applicable for the summary trials by virtue of provisions contained in sub clause (3) of said section. Further submission of the learned counsel that, in the instant case, the order of de novo trial was passed not in such a contingency but by a Presiding Officer who had commenced with the recording of case, is not disputed by learned counsel for the opponents.

4. Having regard to the same, there is substance in the submission canvassed that the decision which was made basis for passing the impugned order being not applicable to the case in question, the passing of such an order was wholly unwarranted. Perusal of the order also does not give any other reason for ordering the de novo trial. Resultantly, the order impugned in the petition cannot be legally sustained. Hence, the same is hereby quashed and set aside with a direction to the concerned court to proceed with the trial from the stage at which de novo trial was ordered.

Rule made absolute in the above terms. No order as to costs.