

(2011) 02 MAD CK 0456
In the Madras High Court
Case No : Criminal RC (MD) No. 2 of 2011

Swaminatha Pillai

APPELLANT

Vs

Mr. A. Senthil Kumar

RESPONDENT

Date of Decision : 17-02-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 262, 263, 264, 265
Negotiable Instruments Act, 1881 (NI) — Section 138, 143

Citation : (2011) 02 MAD CK 0456

Hon'ble Judges : C.T. Selvam, J

Bench : Single Bench

Advocate : T. Senthil Kumar, for the Appellant; E.S. Shivashankkaren, for the Respondent

Judgement

C.T. Selvam, J.—The Petitioner has moved the learned Judicial Magistrate No. III, Trichy in Cr.M.P. No. 5538 of 2010 in C.C. No. 4 of 2006 seeking that the case wherein the Petitioner stands accused of offence u/s 138 of the Negotiable Instruments Act be proceeded with by following the summary trial procedure, as provided for u/s 143 of the Negotiable Instruments Act.

2. The lower Court has held Section 143 of the Negotiable Instruments Act not to be mandatory, since the Section only informs that the procedure of Sections 262 to 265 of the Code of Criminal Procedure is to apply to such trials "as far as may be". It has also found that the Petitioner was trying to protract proceedings as the said plea was not raised at an early stage. It found no irregularity in adopting the summons case procedure and dismissed the petition. It is against such order of dismissal that the present Criminal Revision petition has been filed.

3. Heard.

4. To appreciate the contentions made on behalf of the Petitioner, it would be appropriate to reproduce Section 143 of the Negotiable Instruments Act:

143. Power of Court to try cases summarily:

(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 an 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.

5. On a plain reading, it may be seen that the Magistrate is required to follow the summary trial procedure envisaged under Sections 262 to 265 Code of Criminal Procedure. When such procedure has been followed, the Magistrate may impose a sentence of imprisonment only for a period upto one year and the fine, if any imposed by the Magistrate, shall not exceed Rs. 5,000/-. Section 138 of the Negotiable Instruments Act provides for punishment of imprisonment upto a period of two years and for an imposition of fine which may extend to twice the amount of the cheque. The sentence may either be of imprisonment or of fine or of both. The restrictions placed on the sentence that may be imposed under the first proviso to Section 143 of the Negotiable Instruments Act is lifted by the further proviso which informs that where it appears to the Magistrate that the case is one in which a sentence of imprisonment of term exceeding one year is to be passed, or it otherwise appears for any other reason that it would be undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter follow the procedure informed in the said proviso. From the wording of Section 143 of the Negotiable Instruments Act and the two provisos thereto, it may be seen that the decision to avoid the summary trial procedure and follow that contemplated for summons cases is to be a conscious one. Such conscious decision may be arrived at either at the commencement of or in the course of a summary trial. Thus the decision to opt for the procedure prescribed for a summons case must follow the

commencement of the case by adopting the summary trial procedure. In the decision reported in 2005(1) T.N.L.R.6(Mad), Madras High Court in *G. Chandraskaran v. C.R. Umapathy*, this Court has observed as follows:

15. It is brought to the notice of this Court that the learned Judicial Magistrate in some districts take the complaints filed u/s 138 of Negotiable Instruments Act as Calendar Cases while some others take them on file as Summary Trial Cases. In this context, Negotiable Instruments Amendment Act 2002 has to be taken note of and followed in letter and spirit. Section 143 which has been inserted by the Amendment Act of 2002 stipulates that notwithstanding anything contained in the Code of Criminal Procedure, all offences contained under Chapter XVII of Negotiable Instruments Act dealing with dishonour of cheques for insufficiency etc. of funds in the accounts, shall be tried by a Judicial Magistrate and the provisions of Sections 262 to 265, Code of Criminal Procedure prescribing procedure for summary trials, shall apply to such trials and it shall be lawful for a Magistrate to pass sentence of imprisonment for a term not exceeding one year and an amount of fine (not) exceeding Rs. 5,000/- and it is further provided that in the course of a summary trial, if it appears to a Magistrate that the nature of the case requires passing of a sentence of imprisonment, exceeding one year, the Magistrate (may), after hearing the parties, record an order to that effect and thereafter recall any witness and proceed to hear or rehear the case in the manner provided in Criminal Procedure Code.

16. Even though the case relating to an offence u/s 138 of Negotiable Instruments Act is a summons case, it has to be tried summarily and Sections 262 to 265, Code of Criminal Procedure shall apply. In the course of summary trial, if the nature of the case is such that a sentence of imprisonment exceeding one year may have to be passed or for any other reason, it is undesirable to try the cases summarily, then it is always open to the Magistrate to hear the parties and record an order to that effect and thereafter recall any witness and proceed to hear or rehear the case as per the procedure in trial of summons cases.

6. This Court holds that it is incumbent on all Magistrates to commence proceedings in respect of offences u/s 138 of Negotiable Instruments Act by adopting summary trial procedure contemplated u/s 262 of Criminal Procedure Code. Once so having commenced, the Magistrate may either on his own motion or on that of the parties, hear the parties and pass a reasoned order on which of the two courses viz., that of summary under Chapter XXI Code of Criminal Procedure or of that prescribed for summons cases under Chapter XX Code of Criminal Procedure is to be adopted. What is sought to be emphasized by this Court is that the adoption of the procedure contemplated for a summons case should be the result of a conscious decision of the Court and not mere happen chance.

7. It is brought to the notice of this Court that Magistrates throughout the State quite often adopt the summons case procedure without arriving at a conscious decision thereon. Towards avoiding such mishaps in future, this Court directs a

copy of this order to be forwarded to all the District Courts and Metropolitan Magistrate/Judicial Magistrate Courts. The Magistrates shall henceforth effect compliance in keeping with the observations herein above made and it shall be the duty of the District Judge to ensure such compliance.

8. Considering that adoption of summons case procedure affords better opportunity to the accused to make out his defence and towards avoiding unnecessary upheaval ,this Court directs that the present order shall be complied with in respect of all fresh cases filed u/s 138 of Negotiable Instruments Act.

9. Reverting to the case on hand, the fair submission made by the learned Counsel for the Petitioner is that the prosecution evidence stands recorded by following the procedure for summons cases and that the matter stands at the stage of defence evidence. He would undertake that the Petitioner/accused would now not insist on commencement of the case by adoption of summary trial procedure and that the case may proceed to its logical end towards which purpose the Petitioner would produce the evidence, if any, on his side within a period of one month from the date of receipt of a copy of this order. The learned Judicial Magistrate No. III, Trichy is directed to dispose of C.C. No. 4 of 2006 within a period of three months from the date of receipt of a copy of this order.

10. With the above directions, this petition is disposed of.