

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**Criminal Revision No. 3176 of 2012
Date of Decision: 09.12.2014.**

The Chandigarh State Bank of India
MMBE Coop. Urban Salary Earners
Thriffs and Credit Society Limited

.....Petitioner

Vs.

S.C.Ummat

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. A.D.S.Sukhija, Advocate
for the petitioner.

Mr. Anand Chibbar, Senior Advocate with
Mr. Lalit Tahkur, Advocate
for the respondent.

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SABINA, J.

Petitioner had filed complaint against the respondent under Section 138 of the Negotiable Instruments Act, 1881 ('Act' for short) qua dishonour of cheque dated 1.1.2002 in the sum of ₹ 96,000/-. Trial Court vide judgment/order dated 25.1.2010 ordered the conviction and sentence of the respondent under Section 138 of the Act. Aggrieved against the said judgment/order of his conviction and sentence, respondent preferred an appeal. The Appellate Court, vide order dated 4.7.2012, while setting aside the judgment/order passed by the Trial Court, remanded the case back to the Trial Court for a fresh decision on the ground that the evidence relied upon by the Trial Court, had been recorded by his predecessor and, therefore, *de novo* trial had to be held.

Learned counsel for the petitioner has submitted that the present case was not being tried in a summary manner and rather was being tried as a summons case, therefore, *de novo* trial

was not required to be held after the change of the Magistrate. In support of his argument, learned counsel has placed reliance on **'J.V. Baharuni and another versus State of Gujarat and another, 2014(4) RCR (Criminal) 697**, wherein it was held as under:-

“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 N.I. 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 N.I. 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.”

Learned senior counsel for the respondent, on the other hand, has opposed the petition.

In the present case, admittedly, no interim order was passed by the Magistrate specifically mentioning that the trial was being conducted as a summons case or as a summary case. Complaint was instituted in June 2002. The same remained pending before the Trial Court for about 08 years and was decided on 25.1.2010. A perusal of the judgment of the Trial Court reveals that the complainant led its preliminary evidence and on the basis of the same, accused was ordered to be summoned to face the trial vide order dated 24.10.2002. On appearance of the accused, notice of substance of accusations was served on him. Accused pleaded not guilty and claimed trial. Thereafter, complainant led its evidence. Accused also examined witnesses in his defence. Thus, it cannot be said that the Trial Court was conducting the trial in a summary manner. In fact, Trial Court had tried the case as a summons case. In these circumstances, the Appellate Court fell in error while setting aside the judgment/order passed by the Trial Court dated 25.1.2010 and directing the Trial Court to hold *de novo* trial.

Accordingly, this petition is allowed. Impugned order dated 4.7.2012 is set aside. Appellate Court is directed to dispose of the appeal on merits.

**(SABINA)
JUDGE**

December 09, 2014
Gurpreet