



S.C.C. NO.67/2021

ORDER BELOW EXH-40

(Banto Rodrics v/s Vinayak Kudatarkar)

(CNR NO. MHSI04-000214-2021)

This is an application filed by the accused for a *de novo* trial of the case. The accused states that the proceedings were initiated before the predecessor of this court and were not completed. Following the predecessor's transfer, the case has now moved to this court. As per Section 326(2) of the Code of Criminal Procedure, this court cannot proceed without recording the evidence anew. Therefore, the accused has requested a *de novo* trial and asked for the evidence to be recorded afresh.

2. The complainant has submitted his say at Exhibit 41, and stated that, this application is not tenable as proceeding of the case is not conducted under section 263 or 264 of Code of Criminal Procedure. Further, considering section 143 of N.I.Act court has power to proceed the matter summarily or as a summons trial. This application is only file to cause delay in the case. Consequently, the complainant requests that the application be rejected.

3. Perused the application and say.

4. Heard both sides.

5. The learned Advocate for the accused cited a decision from the ***Suo Motu Writ Petition No. 2 of 2020, decided on April 16, 2021, by the Hon'ble Supreme Court.*** In paragraph 24 of the judgment, it is specified that Magistrates must record reasons before converting the trial of a complaint under Section 138 of the Act from a summary trial to a summons trial. This decision is intended to clarify the proceedings under Section 138. The Supreme Court directed that, at the initial stage of the proceedings, Magistrates should provide reasons before making this conversion. However, in the present case, after the full cross-examination of the complainant and the recording of the statements of the accused under Section 313, there is no specific order from the court indicating the conversion of the summary trial into a summons trial. The direction given in the above decision is to be followed by the Magistrates' Court. If such order has not been passed and evidence is recorded in length, then there is no bar set by the Hon'ble Court as to subsequent officers ceasing to proceed further. Thus, this is not

a barrier for a subsequent officer to proceed with the case. The accused is now seeking a *de novo* trial after the evidence has been presented and the statement of the accused has been recorded. Therefore, the cited decision is not beneficial to the accused.

6. Additionally, the Ld. Counsel for the accused cited the decision in **Sanjabij Tari v. Kishor S. Borcar and another, decided on September 25, 2025,** which reiterates the aforementioned decision about expediting trial proceedings. Since there is no new discussion in that decision, it does not require further examination, in accordance with Section 326(2) of the Code of Criminal Procedure. Moreover, the complainant relied on the decision in Abdul Khabeer v/s Mohd. Osmanoddin 2015 All MR (Cri.) 284. Wherein, it is clarified in paragraph No. 25 *"From the discussion made above and the provisions of sections 461 and 465 of Code, it needs to be observed that once the procedure as laid down for trial of regular summons case is followed, the entire evidence is recorded by one Magistrate and not substance of the evidence is there, this evidence can be*

used by his successor and on this evidence, the case can be decided. For that, the provisions of section 326 (1) and (2) of the Code can be used. In such a case, the accused, convict cannot say that the prejudice only if the case was tried in summary manner, substance of evidence was recorded by the predecessor of the Magistrate. This Court has no hesitation to observe that in the present case also, the judgment and order of conviction cannot be set aside on this ground. This ground was raised by the accused first time in the revision filed in Sessions Court."

7. In view of above decision, it is clear that, when only substance of the evidence is recorded, then it must be summery trial of the case and when entire evidence is recorded by the predecessor, successor can use said evidence.

8. It is important to note that in the present case, evidence has been recorded in detail. After this, the accused was given the opportunity for cross-examination. Once witnesses have been fully examined and cross-examined, the trial transitions from a summary trial to a summons trial. This

principle is well-established according to a decision by the Hon'ble Supreme Court in the case of **Mehsana Nagarik Sahakari Bank Ltd. v. Shreeji Cab Co. (2014) 12 SCC 685**. In that ruling, it was clarified that if evidence is recorded comprehensively, the bar under Section 326(3) of the Cr.P.C. does not apply. A successor magistrate can proceed from the stage left by a predecessor. Furthermore, a de novo trial is mandatory only when the case is purely a summary trial, and it is not applicable where detailed evidence has been recorded.

9. The accused argues that there is no specific order converting the summary trial into a summons trial, which leads to the presumption that the proceedings are still summary. Therefore, after the transfer of the predecessor, this court should start the case de novo. However, the law states that if lengthy evidence is recorded by the predecessor and the accused has been given a full opportunity to cross-examine witnesses without any specific prejudice being caused to them, then the court need not proceed de novo.

10. In the present application, the accused has not

specified any prejudice caused to him if the trial is not conducted de novo. Therefore, in accordance with the aims and objectives of the Negotiable Instruments Act, the case should be disposed of as quickly as possible without further delay. Hence, this application is not sustained in the eyes of the law. Hence, I pass the following order.

ORDER

Application is rejected with a cost of
Rs. 200/- payable to the
complainant on or before next date.

(R. G. Kumbhar)

Date-08.01.2026

Extra Jt. C.J.J.D. & J.M.F.C., Kudal.