

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 968-971 OF 2013
(Arising out of SLP(C) Nos.4381-4384/2012)

MEHSANA NAGRIK SAHKARI BANK LTD.

Appellant(s)

:VERSUS:

SHREEJI CAB CO.& ORS. ETC.

Respondent(s)

O R D E R

1. Leave granted.

2. Heard Mr. Huzefa Ahmadi, learned senior counsel appearing for the appellants and Mr. Shamik Sanjanwala, learned counsel appearing for the respondents.

3. The only question raised in this appeal is as to whether the High Court should have stayed the trial by relying upon the judgment of this Court in Nitinbhai Saevatilal Shah & Anr. Vs. Manubhai Manjibhai Panchal & Anr., (2011) 9 SCC 638.

3. The appellant Bank had filed a complaint before the competent Court under Section 138 of the Negotiable Instruments Act, 1881 against respondent Nos.1 to 3. As the respondents wanted one additional party to be added to that complaint, they filed an application under Section 319 of the Code of Criminal Procedure before the Additional Chief Judicial Magistrate, Mehsana. That application having been rejected, a Criminal revision application was filed before the Principal Sessions Judge, Mehsana. That Judge confirmed the order passed by the Trial Court. Thereafter, the respondents filed an application before the High Court for quashing and setting aside the orders passed by the criminal courts. The High Court proceeded on an entirely different premise and disposed of the application filed by the respondents noting that the evidence in the matter had come to be recorded by Additional Chief Judicial Magistrate, Mehsana. The proceeding under Section 138 of the Negotiable Instruments Act is a summary trial proceeding. Hence, the concerned successor Magistrate had to record the evidence de novo and any order passed on the basis of the evidence

recorded by his predecessor was not valid. The High Court relied upon the above judgment in support thereof and passed an order directing a fresh recording of evidence. It is against this order of the High Court that this appeal, by special leave, has been filed.

4. Mr. Huzefa Ahmadi, learned senior counsel appearing for the appellant Bank pointed out that the law laid down by this Court in the above authority is that when a proceeding is conducted as a summary trial, and when one Magistrate has partly heard the case and is succeeded by another Magistrate, that second Magistrate has to re-hear the whole case afresh and he cannot start from the stage the first Magistrate left it. There was no question of the High Court asking the entire matter to be looked into by another Magistrate de novo, in the present case because, in fact, the evidence had not been recorded in a summary manner, but it was recorded in full. Mr. Sanjanwala, learned counsel appearing for the respondents, on the other hand, submits that the law laid down in *Nitinbhai Saevatilal Shah & Anr. Vs. Manubhai Manjibhai*

Panchal & Anr., (supra) be followed.

5. We have perused the notes of evidence which are produced on record. They clearly show that the evidence in this case was recorded in full and not in a summary manner. That being so, we cannot but accept the submission of Mr. Ahmadi.

6. In the facts and circumstances of the case, we allow this appeal, set aside the order passed by the High Court and direct the Additional Chief Judicial Magistrate, Mehsana, to proceed hereafter from the stage where it is pending now. As far as the application of the respondents for adding some other person to the complaint is concerned, we are not inclined to accept that. It is for the complainant to decide as to against which party it wants to proceed. That application will stand rejected.

.....J
(H.L. GOKHALE)

.....J
(MADAN B. LOKUR)

New Delhi;
July 12, 2013.

SUPREME COURT OF INDIA



JUDGMENT