IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Rev. No. 685 of 2012

Md. Nasim Ansari son of Late Md. Muslim, resident of Millet Nagar, P.O. and P.S. Jugsalai, Town-Jamshedpur, District - Singhbhum East **... ... Petitioner**

Versus

1.The State of Jharkhand

2. Md. Isa, son of Mr. Rasul Mohammad, Resident of 4/1, 'E' Block Awas Shanti, Post Office Road P.O. and P.S. Mango, Town-Jamshedpur, District Singhbhum East

... ... Opposite Parties

CORAM :HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioner : Mrs. Ritu Kumar, Advocate
For the Opp. Party- State : Mrs. Vandana Bharti, A.P.P.
For the Opp. Party No. 2 : Mr. Ashok Kr. Sinha, Advocate

Through Video Conferencing

10**/19.07.2021** Heard Mrs. Ritu Kumar, learned counsel for the petitioner.

2. Heard Mrs. Vandana Bharti, learned A.P.P. appearing on behalf of the opposite party- State.

3. Heard Mr. Ashok Kr. Sinha, learned counsel appearing on behalf of the opposite party no. 2.

4. This criminal revision has been directed against the judgement dated 02.08.2011 passed by learned Sessions Judge, East Singhbhum, Jamshedpur in Criminal Appeal No. 196 of 2009, whereby the learned lower appellate court has confirmed the order and sentence passed by the learned Judicial Magistrate dated 30.06.2009.

The learned Judicial Magistrate, 1st Class, Jamshedpur vide judgement dated 30.06.2009 passed in C/1 Case No. 1464 of 2007, T.R. No. 312 of 2009, has been pleased to hold the petitioner guilty for the offence punishable under Section 138 of the Negotiable Instruments Act and further sentenced the petitioner to undergo rigorous imprisonment for one year coupled with compensation of entire cheque amount of Rs. 80,000/- towards compensation of the cheque amount and

litigation cost in terms of Section 357(3) of the Code of Criminal Procedure.

Submission on behalf of the petitioner

5. The learned counsel for the petitioner submits that the impugned judgement of conviction of the petitioner as well as the sentence for offence under Section 138 of Negotiable Instruments Act is *ex-facie* perverse and cannot be sustained in the eyes of law. She has submitted that there is no finding recorded by the learned courts below regarding service of legal notice in connection with bouncing of the cheque which is a condition precedent for filing of case under Section 138 of Negotiable Instruments Act. She has further stated that even the complainant remained totally silent on the point of service of notice to the petitioner.

6. The learned counsel for the petitioner further submitted that the legal notice dated 24.07.2007 was said to be sent under certificate of posting and not under registered cover so as to even draw any presumption regarding service of notice. She also submitted that even if 24.07.2007 is take to be the date of dispatch of notice and the deemed service is taken, then at best the deemed service can be taken upon expiry of 30 days from 24.07.2007 and upon expiry of 15 days thereafter, the case could have been filed. In the present case, even if the deemed service is taken, then the notice at best could be said to have been served on 24.08.2007 and the case has been filed on 06.09.2007 which is prior to expiry of 15 days from the deemed service of notice. She submits that this is without prejudice to her argument that there is no evidence, rather no averment in connection with the service of legal notice dated 24.07.2007. The learned counsel has also submitted that in the impugned judgements also, there is no finding regarding service of notice/deemed service of notice to the petitioner. The learned

counsel for the petitioner has also submitted that on this short point the matter can be disposed of.

7. The learned counsel submits that apart from aforesaid, she has other points which may not be required to be argued considering the aforesaid technicality of the provisions of Section 138 of Negotiable Instruments Act, 1881 which is enough to set-aside the conviction of the petitioner.

Submission on behalf of the opposite party No. 2 and State

8. The learned counsel appearing on behalf of the opposite party no. 2, on the other hand, has been given an opportunity to indicate to this Court regarding any finding of the learned courts below on the point of service of legal notice said to have been sent on 24.07.2007. After going through the impugned judgements, the learned counsel for the opposite party no. 2 fairly submits that the learned courts below have not recorded any finding regarding service of legal notice dated 24.07.2007 and it is not in dispute that the legal notice dated 24.07.2007 was dispatched under certificate of posting and not under registered cover.

9. The learned counsel for the opposite party no. 2, while opposing the prayer, has also submitted that both the cheques were produced for encashment before the bank within the period of validity of the cheques and intimation from the bank was received regarding bouncing of cheques on 10.07.2007. The legal notice was sent on 24.07.2007 which was also within the stipulated period as per the provisions of Section 138 of Negotiable Instruments Act, 1881.

10. The learned counsel for the opposite party no. 2 has further submitted that both the learned courts below have convicted the petitioner. The scope of interference in revisional jurisdiction is very limited. He submitted that there is no scope for re-appreciation of evidences on record and coming to a

different finding in absence of any material irregularity or perversity in the impugned judgements.

11. The learned counsel appearing on behalf of the opposite party- State has supported the submissions made on behalf of the opposite party no.2.

Findings of this Court

12. As per the prosecution story, the accused-petitioner has received different amount on different dates till December, 2004 towards friendly loan from the complainant with promise to return the entire loan amount. The relevant dates are as under: -

a. 03.03.2007 and 30.05.2007 – the dates of the two cheques- Rs.50,000/- and Rs.30,000/-.
b. 11.06.2007 -the complainant produced the two cheques for encashment, but both the cheques bounced owing to *"insufficiency of funds"*.
c. 15.06.07- the complainant met the accused and intimated regarding bouncing of the cheques, but the accused told him to present the cheques again.
d. 10.07.2007- the complainant again produced both the cheques for encashment before the bank but the cheques were returned by the bank on the ground of *"non-acceptable on account of its being non-MICR."*
e. 24.07.2007 -the complainant sent a legal notice through his Advocate demanding the amount but to no effect and hence the complainant proceeded to file a case against the accused-petitioner.
f. The complainant tried to contact the petitioner but could not contact him and the conduct of the petitioner was indicative of the fact that the petitioner did not want to return the money taken as loan as back as in the year 2004.
g. It was alleged that the petitioner had well knowledge about MICR cheques and knowingly with intention to

harass the complainant, the petitioner had advised the complainant to again produce both the cheques before the bank for encashment.

h. 06.09.2007- complaint case filed under section 138 of the Negotiable Instrument Act, 1881 as well as under section 420/406 of IPC.

i. 21.01.2008 -a prima-facie case was found against the petitioner-accused for the offence punishable only under Section 138 of the Negotiable Instrument Act, 1881.

j. The substance of accusation for the offence under Section 138 of the Negotiable Instrument Act was explained to the accused to which the accused-petitioner pleaded not guilty and claimed to be tried.

k. The complainant was examined as the sole prosecution witness. He proved the two cheques as exhibit-1 and 1/1 ; two bank memos dated 12.06.07 as exhibit- 2 and 2/1 showing return of cheques on account of insufficient fund; photocopy of legal notice as exhibit-3; receipt under certificate of posting as exhibit- 4 and bank memo covering letter dated 10.07.2007 as exhibit-5 showing return of cheques with remark not acceptable on account of its being non-MICR.

l. In the defence, statement of the accused-petitioner was recorded under Section 313 of the Cr. P.C. in which he has pleaded innocence.

13. Considering the materials on record and the arguments advanced on behalf of the counsels appearing for the parties, the following questions arise for consideration by this court: -

*a) **Whether bouncing of cheques on the ground that the same were not-acceptable to the bank on account of its being non-MICR, could call for prosecution under Section 138 of Negotiable Instruments Act, 1881?***

If the answer of the aforesaid question is in negative, further question would be-

Whether the cheques bounced upon their first presentation on 11.06.2007 on account of insufficiency of funds can still be taken as a trigger point for constituting offence under Section 138 of Negotiable Instruments Act, 1881?

b) Whether the dispatch of demand notice under certificate of posting can be said to a valid mode of service under the provisions of Section 138 of Negotiable Instruments Act, 1881?

If the answer to the aforesaid question is in the affirmative, further question would be,

When can the demand notice dispatched under certificate of posting be said to have been served upon the addressee in absence of any proof of its service, either documentary or circumstantial?

And also

Whether on the date of filing of the complaint case under section 138 of the Negotiable Instruments Act, 1881, the cause of action had crystalized or the complaint itself was pre-mature?

Point no. (a)

14. This Court finds that it was the specific case of the prosecution that the cheques were presented for collection before the bank and had bounced due to 'insufficiency of fund' and the complainant had intimated the petitioner about bouncing of cheques on 15.06.2007. It is further the case of the prosecution that the petitioner had asked the complainant to produce the cheque again before the Bank for encashment which the complainant did on 10.07.2007, but the cheques were returned by the bank on the ground of being not acceptable being of the nature of non-MICR. Thus, on the second presentation of the cheques, the cheques had become non-acceptable on account of it being non-MICR cheques.

15. The learned trial Court convicted the petitioner under Section 138 of the Negotiable Instruments Act and has totally

ignored the reason for second bouncing of cheques pursuant to Bank memo cover letter dated 10.07.2007 which was marked as exhibit-5 i.e *on account of its being non-MICR and not acceptable to the bank,* which indicated that the cheques had bounced not because of insufficiency of funds but because of the fact that the cheques themselves had lost their validity/acceptability by the bank.

16. The learned Appellate Court also upheld the conviction of the petitioner under Section 138 of the Negotiable Instruments Act and has again totally ignored the aforesaid reason for second bouncing of cheques pursuant to Bank memo cover letter dated 10.07.2007 which was marked as exhibit-5 i.e *on account of its being non-MICR and not acceptable to the bank.* The learned Appellate Court also recorded that when the cheques were produced in the bank they were bounced due to insufficiency of fund and has committed error of record particularly in view of the admitted fact that the demand notice was issued upon second bouncing of cheques and not on first bouncing of the cheques and the legal notice was beyond the stipulated period of one month when counted from the first bouncing of the cheques.

17. Admittedly the second bouncing of cheques was not on account of any insufficiency of fund in the bank, nor the same was on account of any act of stop payment etc. from the side of the petitioner. Thus, by the time the second presentation of cheques was made in the bank, the same had become not acceptable by the bank on account of being non-MICR cheques. Accordingly, the petitioner had no role to play in return of cheques upon second presentation, but the same were not acceptable by the bank itself on account of technical reasons. As per proviso (a) of section 138 of the Negotiable Instrument Act, 1881, the cheque has to be presented within six months from the date it is drawn or within the period of its validity, whichever is

earlier. This Court is of the considered view that bouncing of cheques upon second presentation on account of them being not acceptable by the bank (on account of being non-MICR cheque) was not on account of any act or omission of the petitioner. Accordingly, the said bouncing of cheques on second presentation cannot be a ground for prosecution under Section 138 of the Negotiable Instruments Act, 1881 as one of the conditions precedent for prosecution i.e the cheque itself should be valid on the date of its presentation, is not satisfied when the cheques are returned as not acceptable to the bank on account of being non-MICR cheques.

18. In order to answer the connected question to question no. (a) as mentioned above, admittedly, the cheques were accepted by the bank upon their first presentation on 11.06.2007 when they bounced due to insufficient funds. In the present case the legal notice was sent through Advocate on 24.07.2007 on the basis of dishonour of cheques upon second presentation. If the date of bouncing of cheques is taken as 11.06.2007 and its knowledge upon the complainant is taken as 15.06.2007 i.e. the date on which the complainant informed the petitioner regarding bouncing of the cheques, the Legal notice was to be issued to the petitioner within one month thereafter i.e. by 15.07.2007. However, in the instant case, the legal notice was sent on 24.07.2007. Accordingly, if the first dishonour is taken into consideration, the dispatch of legal notice regarding bouncing of cheques, is beyond the time period of 30 days as prescribed under proviso (b) to Section 138 of Negotiable Instruments Act, 1881. Thus, the first bouncing of cheques when read with the date of dispatch of legal notice, also does not help the complainant in any manner whatsoever as one of the conditions precedent as prescribed under proviso (b) to Section 138 of Negotiable Instruments Act, 1881, will still remain unsatisfied.

The issue no.(a) is answered accordingly.

Issue no. (b)

19. It is not in dispute that the legal notice dated 24.07.2007 was never sent through registered post, but was sent under certificate of posting which was marked as Exhibit-4. A specific plea was raised by the defence before the learned Trial Court that there is no postal receipt pertaining to any registry for sending the legal notice and the prosecution has produced the legal notice sent by UPC (under postal certificate).

20. Upon perusal of the provisions of Section 138 of Negotiable Instruments Act, 1881, this court finds that there is no prescribed mode of dispatch of the demand notice regarding bouncing of cheque and it only provides that the same must be in writing and within 30 days of the receipt of information regarding return of the cheque. In that view of the matter, a demand notice sent under a certificate of posting is also a valid mode of dispatch of demand notice. In this regards, reference be made to the judgement dated 24.04.2020 passed by the Hon'ble Supreme court in Civil Appeal No. 2375 of 2020 in the case of "***Mohd. Asif Naseer vs. West Watch Company through its Proprietor***", wherein notice dispatched under certificate of posting was accepted as valid mode of dispatch of notice when under the statute involved in the said case also, there was no prescribed mode of dispatch of the notice.

21. Accordingly, this court is of the considered view that dispatch of demand notice under Section 138 of Negotiable Instruments Act, 1881 under "certificate of posting" is permissible in law.

22. So far as service of notice dispatched under certificate of posting is concerned, the same cannot have the same status as that of notice sent under registered cover or speed post which are specifically covered under the provisions of section 27 of the General Clauses Act. This aspect of the matter has also been

considered by the Hon'ble Supreme Court in the aforesaid judgement in the case of ***"Mohd. Asif Naseer vs. West Watch Company through its Proprietor"*** (supra).

23. The Hon'ble Supreme Court at para-17 and 18 considered the earlier judicial pronouncements on the point and held as under: -

> *"17. On the contrary, in the case of Sumitra Devi vs. Sampuran Singh (2011) 3 SCC 556, which has been relied upon by learned Senior Counsel for the Appellant, this Court had held that "it will all depend on the facts of each case whether the presumption of service of notice sent under postal certificate should be drawn. It is true that as observed by the Privy Council in its above referred judgment, the presumption would apply with greater force to letters which are sent by registered post, yet, when facts so justify, such presumption is expected to be drawn even in the case of a letter sent under postal certificate." Considering the facts and circumstances of that case, this Court held the notice sent under certificate of posting to be sufficient service.*
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> *In the case of Ranju vs. Rekha Ghosh (2007) 14 SCC 81, this court was considering a case where one month's notice was to be given to the tenant for eviction. After considering the provisions of the relevant Tenancy Act, Transfer of Property Act and the Bengal General Clauses Act, it was held that "clause (6) provides mere "one month's notice", in such event, the said notice can be served in any manner and it cannot be claimed that the same should be served only by registered post with acknowledgement due." In the facts of that case, it was held that service of notice sent under certificate of posting was sufficient. Similar is the case at hand, where the Act provides for that 'the landlord has given a notice…', without specifying the mode of such notice, and in the facts of the present case, notice sent under postal certificate has rightly been held to be proper service.*
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> *While considering a case of service of notice under the Companies Act, this Court, in the case of V.S. Krishnan vs. Westfort Hi-Tech Hospitals (2008) 3 SCC 363, has held that service of notice sent under certificate of posting would be sufficient where "there are materials to show that notices were sent, the burden is on the addressee to rebut the statutory presumption."*
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> *18. It may be so that mere receipt of notice having been sent under certificate of posting, in itself, may not be sufficient proof of service, but if the same is coupled with other facts and circumstances which go to show that the party had notice, the same could be held to be sufficient service on the party. In the present case, the law permits filing of a document (receipt of under certificate of posting in this case) to be filed along with an affidavit, which has been done so in this case. Further, there was*

clear admission of the respondent (tenant) that the appellant was his landlord (for which sale deed had been supplied to the tenant) and subsequent act of the respondent (tenant) depositing the rent under Section 30(1) of the Rent Control Act in the Court and other attending circumstances, as have been considered by the Prescribed Authority, would all clearly go to show that there was sufficient proof of service of notice, which finding of fact has been affirmed by the Appellate Authority, and we see no reason for the Writ Court to have unsettled such concurrent findings of fact."

24. The aforesaid judgement of the Hon'ble supreme court is, *interalia*, on the point as to whether service of notice under certificate of posting is permissible when the statute is silent on the point of mode of service of notice and also on the point that mere receipt of notice having been sent under certificate of posting, in itself, may not be sufficient proof of service, but if the same is coupled with other facts and circumstances which go to show that the party had notice, the same could be held to be sufficient service on the party. The said judgement also considered the earlier judicial pronouncement that the presumption regarding service of notice would apply with greater force to letters which are sent by registered post, yet, when facts so justify, such presumption is expected to be drawn even in the case of a letter sent under postal certificate.

25. In the instant case, admittedly, there is no service report regarding service of demand notice upon the petitioner and what is on record is only the dispatch proof under certificate of posting. The learned Trial Court however convicted the petitioner by recording its finding at para-8 which reads as follows:

"8. I have carefully scrutinized the entire evidence available on record. It is evident that the complainant has got all the relevant documents duly proved and on perusal of the documents it appears that the cheques are dt. 03.03.07 and 30.05.07 which have been produced for encashment on 12.06.07 for the first time and on 10.07.07 for the second time which is evident from the bank memo and the letter of Bank of India, JSR, legal notice is dt. 24.07.07, the

postal receipt by which the legal notice has been dispatched bears the date as 24.07.07 on its back and the case has been filed on 6.09.07 and on the whole it is evident that both the cheques have been produced for encashment within the stipulated period of six months, legal notice had also been sent within the stipulated period of 30 days from the date of receiving the intimation from the bank on 10.07.07 on producing the cheque for encashment for the second time, and the case had been filed within the stipulated period of 30 days after arising of the cause of action which is after 15 days from dispatch/service of the notice and as such the case of the complainant has duly been proved by cogent documentary evidence and in terms of presumption under Section 139 of the N.I. Act. So far Exhibit-A and B are concerned, in the complaint petition itself the complainant has accepted the factum of receiving Rs. 20,000/- and Exhibit B discloses that the complainant has received a sum of Rs. 14,000/- in terms of this case on 11.8.08 which is pointer to the fact of taking money from the complainant by the accused and so far Ext. B is concerned it is account and the averment of Ext. B has not been proved and only signature has been proved hence the averment of Ext. B which is perhaps nonest in the eyes of law, is not acceptable and on going through the entire evidence on record and also in view of the stipulated law under Section 139 of the N.I. Act I am of the considered view that the prosecution has well been able to substantiate the charge levelled against the accused beyond all reasonable doubt and hence I hold the accused guilty for the offence punishable under Section 138 of the N.I. Act. The bail bond of the accused is being cancelled and he is being taken into custody." (emphasis supplied)

26. It is now well settled by virtue of the aforesaid judgement of the Hon'ble Supreme Court that mere receipt of notice having been sent under certificate of posting, in itself, may not be sufficient proof of service, but if the same is coupled with other facts and circumstances which go to show that the party had notice, the same could be held to be sufficient service on

the party. This court finds that the learned trial court has not at all given any finding regarding service of demand notice upon the petitioner said to have been dispatched under certificate of posting and the petitioner has been convicted by holding that the case was filed within a period of 30 days after arising of cause of action which is after 15 days from the dispatch/service of notice. Before the appellate court, a plea was raised by the defence that the demand notice was incorrectly addressed and there was non-service of demand notice but the said plea was rejected by recording that the complainant was thoroughly cross examined and there were no material contradiction in his evidence, who was the sole witness of the case.

27. It appears that the learned Trial Court has calculated the cause of action to file the case to be 15 days without making any distinction between the date of dispatch of notice (which was proved) and date of service of notice (which was neither disclosed by the complainant in his complaint /evidence nor proved). The appellate court has not examined the time line regarding filing of case under Section 138 of Negotiable Instruments Act, 1881.

28. Admittedly, there is no service report regarding service of the demand notice. This Court also finds that there is no material circumstance on record to show service of demand notice, much less any particular date of service of demand notice upon the petitioner.

29. In the aforesaid judgement passed by the Hon'ble Supreme Court another judgement decided in the context of the Companies Act, 1956 has been considered by observing that while considering a case of service of notice under the Companies Act, in the case reported in (2008) 3 SCC 363, it has been held that service of notice sent under certificate of posting would be sufficient where there are materials to show that notices were sent and the burden is on the addressee to rebut

the statutory presumption. The said case was dealing with the Companies Act which had specific provision under section 53(2) which made it clear that after expiry of 48 hours, a notice duly addressed and stamped and sent under certificate of posting is deemed to have been duly served. However, under the provisions of Section 138 of Negotiable Instruments Act, 1881 there is no such corresponding provision regarding deemed service of demand notice sent under certificate of posting, though there is no bar in sending the demand notice under certificate of posting. Meaning thereby that in view of ratio of the aforesaid judgement of Hon'ble Supreme Court decided on 24.04.2020, mere receipt of notice having been sent under certificate of posting, in itself, may not be sufficient proof of service, but if the same is coupled with other facts and circumstances which go to show that the party had notice, the same could be held to be sufficient service on the party. In the instant case, apart from receipt of notice having been sent under certificate of posting, there is no other material or other facts and circumstances to show that the petitioner was served with the demand notice much less any particular date of service of demand notice.

30. This court is of the considered view that both the learned courts below have failed to consider that there was no evidence regarding service of demand notice to the petitioner sent under certificate of posting. This court is of the considered view that no presumption in connection with such demand notice under Section 138 of Negotiable Instruments Act, 1881 sent through certificate of posting can be drawn unless it is coupled with other facts and circumstances which go to show that the party had notice. This Court is of the considered view that presumption of deemed service of notice only by virtue of the same having been sent through registered post/speed post can be drawn by virtue of the provisions of Section 27 of the

General Clauses Act which specifically refers to registered post but has no reference to letters sent under certificate of posting. Accordingly, in absence of any finding regarding any other facts and circumstances proving that the petitioner had knowledge of the demand notice, the demand notice sent under certificate of posting cannot be said to have been served only on the strength of its dispatch proof. Accordingly, the condition precedent for filing of case under Section 138 of Negotiable Instruments Act, 1881 i.e. service of demand notice has not been satisfied and accordingly, the conviction of the petitioner for the offence under Section 138 of the Negotiable Instruments Act cannot be sustained in the eyes of law.

31. Considering the best case of the complainant and even assuming that there is presumption regarding service of the demand notice sent under certificate of posting, the same also does not help the complainant in any manner in view of the following discussions.

32. This Court finds that presumption regarding service of demand notice sent even through registered cover can be drawn only upon expiry of 30 days from the date of dispatch of notice as has been held by the Hon'ble Supreme Court in the judgment reported in ***(2008) 13 SCC 689 (Subodh S. Salaskar vs. Jayprakash M. Sah and Another).*** In the said judgment the notice was sent through speed post and although the actual date of service of notice was not known, the Complainant proceeded on the basis that the same was served within the reasonable period. It was held that if the presumption of notice within the reasonable period is raised, the deemed service at best can be taken to be 30 days from the date of its issuance and the accused was required to make payment in terms of the said notice within 15 days thereafter and the complaint petition therefore could have been filed after expiry of 15 days given to the accused for payment of money after receipt of notice.

33. In the judgment passed by the Hon'ble Supreme Court reported in ***(2014) 10 SCC 713 (Yogendra Pratap Singh vs. Savitri Pandey and Another)*** it has been held by the Hon'ble Supreme Court at Paragraphs- 30, 31 , 36 and 38 as under:

> ***"30.*** *Section 138 of the NI Act comprises of the main provision which defines the ingredients of the offence and the punishment that would follow in the event of such an offence having been committed. Appended to this section is also a proviso which has three clauses viz. (a), (b) and (c). The offence under Section 138 is made effective only on fulfilment of the eventualities contained in clauses (a), (b) and (c) of the proviso. For completion of an offence under Section 138 of the NI Act not only the satisfaction of the ingredients of offence set out in the main part of the provision is necessary but it is also imperative that all the three eventualities mentioned in clauses (a), (b) and (c) of the proviso are satisfied. Mere issuance of a cheque and dishonour thereof would not constitute an offence by itself under Section 138.*
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> ***31.*** *Section 138 of the NI Act has been analysed by this Court in Kusum Ingots & Alloys Ltd. wherein this Court said that the following ingredients are required to be satisfied ……*
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> ***36.*** *A complaint filed before the expiry of 15 days from the date on which notice has been served on drawer/accused cannot be said to disclose the cause of action in terms of clause (c) of the proviso to Section 138 and upon such complaint which does not disclose the cause of action the court is not competent to take cognizance. A conjoint reading of Section 138, which defines as to when and under what circumstances an offence can be said to have been committed, with Section 142(b) of the NI Act, that reiterates the position of the point of time when the cause of action has arisen, leaves no manner of doubt that no offence can be said to have been committed unless and until the period of 15 days, as prescribed under clause (c) of the proviso to Section 138, has, in fact, elapsed. Therefore, a court is barred in law from taking cognizance of such complaint. It is not open to the court to take cognizance of such a complaint merely because on the date of consideration or taking cognizance thereof a period of 15 days from the date on which the notice has been served on the drawer/accused has elapsed. We have no doubt that all the five essential features of Section 138 of the NI Act, as noted in the judgment of this Court in Kusum Ingots & Alloys Ltd. and which we have approved, must be satisfied for a complaint to be filed under Section 138. If the period prescribed in clause (c) of the proviso to Section 138 has not expired, there is no commission of an offence nor accrual of cause of action for filing of complaint under Section 138 of the NI Act.*

37. *……*

38. *Rather, the view taken by this Court in Sarav Investment & Financial Consultancy wherein this Court held that service of notice in terms of Section 138 proviso (b) of the NI Act was a part of the cause of action for lodging the complaint and communication to the accused about the fact of dishonouring of the cheque and calling upon to pay the amount within 15 days was imperative in character, commends itself to us. As noticed by us earlier, no complaint can be maintained against the drawer of the cheque before the expiry of 15 days from the date of receipt of notice because the drawer/accused cannot be said to have committed any offence until then. We approve the decision of this Court in Sarav Investment & Financial Consultancy and also the judgments of the High Courts which have taken the view following this judgment that the complaint under Section 138 of the NI Act filed before the expiry of 15 days of service of notice could not be treated as a complaint in the eye of law and criminal proceedings initiated on such complaint are liable to be quashed."*

34. This Court finds that the law has been well settled by the aforesaid judgement that the cause of action for filing a complaint case under Section 138 of the Negotiable Instruments Act could not arise prior to expiry of 15 days from the date of service of legal notice on the accused.

35. Admittedly there is no service report of legal notice in the present case which was sent under certificate of posting and not by registered post. Even if it is assumed for the sake of arguments that legal notice sent under certificate of posting would draw a presumption of deemed service, though under section 27 of the General Clauses Act, 1887 the question of presumption of service of letter arises only when it is sent under registered post, then also the complaint case filed by the complainant in the instant case is pre-mature when considered in the light of the time-lines prescribed under Section 138 of Negotiable Instruments Act, 1881. Even if the best case of the Complainant is taken into consideration, then the date of dispatch of legal notice regarding bouncing of the cheques by the complainant is 24.07.2007 (under certificate of posting), the date of deemed service of legal notice upon the petitioner

would be on or about 24.08.2007 (30 days from dispatch of legal notice) and 15 days from the date of service of notice would expire only on or about 08.09.2007 and present complaint case has been filed on 06.09.2007.

36. This Court finds that in the light of the judgment passed by the Hon'ble Supreme Court reported in ***(2014) 10 SCC 713 (Yogendra Pratap Singh –versus- Savitri Pandey and Another),*** the complaint filed by the complainant is pre-mature as the cause of action for filing the complaint case under Section 138 of the Negotiable Instruments Act, 1881 had not crystalised on 06.09.2007 and accordingly, the complaint itself was pre-mature and hence not maintainable.

37. In view of the aforesaid findings, the condition precedent for filing the case under Section 138 of the Negotiable Instruments Act, 1881, having not been satisfied, the complaint itself was not maintainable on the day it was filed and accordingly, the petitioner could not have been convicted under the said Section. The question of any presumption regarding existing debt under Section 139 of the Negotiable Instruments Act, 1881 also could not arise as the complaint itself was not maintainable.

Point no. (b) is answered accordingly.

38. The aforesaid aspects of the case have not been considered by the learned courts below which has resulted in failure of justice and the impugned judgement of conviction of the petitioner for offence under Section 138 of the Negotiable Instruments Act, 1881 cannot be sustained in the eyes of law. The impugned judgements of conviction of the petitioner under Section 138 of Negotiable Instruments Act, 1881 suffer from patent illegality and ignoring the mandatory provisions of Section 138 of Negotiable Instruments Act, 1881 with regards to the cause of action as fully discussed above, which calls for interference under revisional jurisdiction of this court.

Accordingly, the present revision petition is hereby allowed. The impugned judgements and sentence passed by the learned courts below are hereby set aside.

39. The petitioner is discharged from the liability of the bail bonds.

40. Pending interlocutory applications, if any, are closed.

41. Let the lower court records be sent back to the court concerned.

42. Let this order be communicated to the learned court below through 'FAX / e-mail'.

(Anubha Rawat Choudhary, J.)

Pankaj/-