A.F.R.

Neutral Citation No. - 2024:AHC:80741

Court No. - 92

Case :- APPLICATION U/S 482 No. - 11995 of 2024

Applicant :- Rajiv Malhotra
Opposite Party :- State of U.P. and Another
Counsel for Applicant :- Abhay Mani Tripathi,Nipun Singh
Counsel for Opposite Party :- G.A.

Hon'ble Arun Kumar Singh Deshwal,J.

1. Heard Sri Nipun Singh along with Sri Naman Agrawal, learned counsel for the applicant and Sri Rajeev Kr. Singh, learned A.G.A. for the State.

2. The instant application has been filed to quash the impugned summoning order dated 16.8.2023 as well as the entire proceeding of Complaint Case No. 10789 of 2023 (*Rahul Chauhan vs. Rajiv Malhotra*), under Section 138 The Negotiable Instruments Act, 1881 (hereinafter referred to as "N.I. Act"), P.S. Sector-20 Noida, Bulandshahr, pending before Additional Civil Judge (J.D.)-3/J.M., Gautam Buddh Nagar.

3. learned counsel for the applicant contends that the complaint of opposite party No.2 was dismissed in default on 18.10.2023 at the stage of taking steps itself. Then, the concerned Court cannot restore the same because it had no jurisdiction to recall the order of dismissing the complaint for want of prosecution. In support of his contention, learned counsel for the applicant has relied upon the judgement of ***Major General A.S. Gauraya and another vs. S.N. Thakur and another; (1986) 2 SCC 709*.** In paragraphs No. 9, 10 & 11 of this judgement, the Apex court observed that when the complaint is dismissed for non-prosecution, then the second complaint is permissible, but restoring the same by recalling the order of dismissal is not permissible. Learned counsel for the applicant has relied upon another judgement of the Punjab and Haryana High Court in the case of ***Krishan Lal vs. Sangeeta Aggarwal; Criminal Misc. No. M - 79076 of 2006*** in which learned Single Judge also observed that when the complaint is dismissed in default, then the same cannot be restored by the same Court, and the remedy is available to file revision.

4. It is further submitted by learned counsel for the applicant that the cheque in question was conditional cheque with the condition that before submitting the cheque, opposite party No.2 will inform the applicant. In support of his contention, learned counsel for the applicant has relied upon a judgement of this Court in ***Smt. Preeti Kamal Kothari vs. State of U.P. and another; 2016 SCC OnLine All 461***. Paragraph No.10 of the aforesaid judgement is quoted as under:-

"10. In Vinita S. Rao v. Essen Corporate Services Pvt. Ltd., (2015) 1 SCC 527, one of the question before the Court was whether the cheques were given as a security, or for the purpose of any legally recoverable dues. The question was left open to be decided by the High Court. But it can be inferred that the cheques issued for security purpose, upon dishonour, would not constitute an offence under Section 138 N.I. Act. ***The question, as to whether the cheques were issued for security or as guarantee, is a question of fact which can be gone into in trial. The matter can, however, be agitated in proceedings under Section 482 Cr.P.C. when the fact is reflected from incontrovertible document brought on record."***

5. Learned counsel for the applicant has further relied upon the judgement of the Apex Court in ***Indus Airways Private Limited and Others Versus Magnum Aviation Private Limited and Another, (2014) 12 SCC 539***. Paragraph No.9 of the aforesaid judgement is quoted as under:-

"9. The Explanation appended to Section 138 explains the meaning of the expression "debt or other liability" for the purpose of Section 138. This expression means a legally enforceable debt or other liability. Section 138 treats dishonoured cheque as an offence, if the cheque has been issued in discharge of any debt or other liability. The Explanation leaves no manner of doubt that to attract an offence under Section 138, there should be a legally enforceable debt or other liability subsisting on the date of drawal of the cheque. In other words, drawal of the cheque in discharge of an existing or past adjudicated liability is sine qua non for bringing an offence under Section 138. If a cheque is issued as an advance payment for purchase of the goods and for any reason purchase order is not carried to its logical conclusion either because of its cancellation or otherwise, and material or goods for which purchase order was placed is not supplied, in our considered view, the cheque cannot be held to have been drawn for an existing debt or liability. The payment by cheque in the nature of advance payment indicates that at the time of drawal of cheque, there was no existing liability."

6. It is further submitted by learned counsel for the applicant that service through courier cannot be deemed to be service under Section 138 N.I. Act because as per Section 138 N.I. Act, notice must be sent through registered post. It is also submitted that though service through WhatsApp is permissible under Section 4 of the I.T. Act, there is no provision providing the deemed service of the notice, sent through WhatsApp. There needs to be an amendment in Section 27 of the General Clauses Act to ensure that WhatsApp service is sufficient. It is further submitted that for effective service through WhatsApp, there must be process service rules as framed by the Bombay High Court, which is named "Bombay High Court Service of Processes by Electronic Mail Services Rules, 2017".

7. Per contra, learned A.G.A. has stated that in the case of ***Vishnu Agarwal vs. State of U.P. and another (2011) 14 SCC 813***, the Apex Court observed that if the complaint was dismissed for want of prosecution at the initial stage, the Court concerned has jurisdiction to recall it on the recall application.

8. After considering the rival submissions of learned counsel for the parties and on perusal of the record, the following questions arise for determination:-

(i) whether the Court concerned has the authority to recall its order of dismissing the complaint for want of prosecution at the initial stage;

(ii) whether the conditional cheque, which was required to be produced after giving information to the drawer, will attract the offence under Section 138 N.I. Act after its dishonour if no information was given to the drawer of the cheque before the presentation of the same in the bank;

(iii) whether a written notice through courier service is valid notice under Section 138 N.I. Act and whether presumption of service under Section 27 of the General Clauses Act can be invoked for this notice;

(iv) whether service of notice through WhatsApp cannot be said to be effective service unless rules are framed prescribing the procedure for delivery of service.

9. So far as the first question is concerned, though there is no specific provision for recalling the order in Cr.P.C., even the order of dismissal of complaint for want of prosecution, in the case of ***Vishnu Agarwal (supra)***, Hon'ble Apex Court observed that if the order is not passed on merit but dismissed for want of prosecution, then the Court has authority to recall its order even in criminal jurisdiction because it is a procedural recall and not the review of the order. Paragraphs No. 6 & 7 of the judgement in ***Vishnu Agarwal (supra)*** is quoted as under:-

> *"6. In our opinion, Section 362 cannot be considered in a rigid and overtechnical manner to defeat the ends of justice. As Brahaspati has observed:*
>
> *"Kevalam shastram ashritya na kartavyo vinirnayah yuktiheeney vichare tu dharmahaani prajayate"*
>
> *which means:*
>
> *"The Court should not give its decision based only on the letter of the law.*
>
> *For if the decision is wholly unreasonable, injustice will follow."*
>
> *7. Apart from the above, we are of the opinion that the application filed by the respondent was an application for recall of the order dated 2-9-2003 and not for review. In Asit Kumar Kar v. State of W.B. [(2009) 2 SCC 703 : (2009) 1 SCC (L&S) 541 : (2009) 1 SCC (Cri) 851 : (2009) 1 SCR 469] this Court made a distinction between recall and review which is as under: (SCC p. 705, paras 6-7)*
>
> *"6. There is a distinction between… a review petition and a recall petition. While in a review petition the Court considers on merits where there is an error apparent on the face of the record, in a recall petition the Court does not go into the merits but simply recalls an order which was passed without giving an opportunity of hearing to an affected party.*
>
> *7. We are treating this petition under Article 32 as a recall petition because the order passed in the decision in All Bengal Excise Licensees' Assn. v. Raghabendra Singh*

[(2007) 11 SCC 374] cancelling certain licences was passed without giving an opportunity of hearing to the persons who had been granted licences.""

10. From the perusal of the above discussion, it is clear that the contention of learned counsel for the applicant that the same Court cannot recall the order of dismissing the complaint for want of prosecution, but it can be recalled by a higher court either in revision or second complaint for the same cause of action, is misconceived. In the judgement of ***Major General A.S. Gauraya (supra),*** relied upon by the counsel for the applicant, the Apex Court observed that if the complaint is dismissed for want of prosecution, then the same cannot be recalled by the same Court but by the higher Court either in revision or in the second complaint, but in the subsequent judgement of ***Vishnu Agarwal (supra)*** as mentioned above, the Apex Court observed that if the order was not passed on merit, the same could be recalled by the same Court. Therefore, the dismissal order of the complaint can be recalled by the same Court if the order was not passed on merit. Even otherwise proceeding under Section 138 N.I. Act is quasi civil in nature, not strictly criminal in nature, and some of the provisions of Cr.P.C. have been adopted only for expeditious disposal of the complaint under the N.I. Act, but that does not make this proceeding purely criminal proceeding so long as it continues to be summary in nature. Therefore, all the provisions of Cr.P.C. are not strictly applied in the proceedings under N.I. Act which is summary in nature. Therefore, a bar of Section 362 Cr.P.C. will not apply if the complaint is dismissed for want of prosecution at the initial stage. Even the order of dismissal of a complaint for want of prosecution was recalled a long time ago, and the Court has been proceeding to hear the case; therefore, recalling such an order will greatly prejudice the complainant.

11. The second question, whether the conditional cheque on bouncing will attract the offence under Section 138 N.I. Act even if no notice was given as per the condition to the drawer of the cheque before presenting the same in the bank is no more res integra and the Apex Court in the judgment of ***Sunil Todi and others vs. State of Gujarat and another; 2021 SCC OnLine SC 1174*** already observed that even if there is condition that the cheque is for security deposit and the cheque was to be deposited after getting confirmation, it will attract the ingredients of Section 138 N.I. Act on bouncing of the same and non-payment of the cheque amount after the expiry of 15 days from the date of receiving the notice.

12. Therefore, from the perusal of the above legal position, it is clear that even if there is a condition that before the presentation of the cheque, notice should be given to the drawer of the cheque, even then on bouncing of such conditional cheque, offence under Section 138 N.I. Act will be attracted if no information is given to the drawer of the cheque.

13. So far as the third question, whether the written notice through courier service is valid notice under Section 138 N.I. Act is concerned, for deciding this question, it is necessary to consider Section 138 N.I. Act which provides the requirement of

giving notice in writing to the drawer of the cheque on bouncing of the same, but this section does not provide the mode of sending notice. However, Section 94 of the N.I. Act provides that notice, on dishonouring of the cheque, can be given orally or in writing with a further condition that if it is given in writing, then it may be sent by post. Section 138 and 94 of the N.I. Act is quoted as under:-

> *"**Section 138. Dishonour of cheque for insufficiency, etc., of funds in the account.-***
>
> *Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for 2[a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:*
>
> *Provided that nothing contained in this section shall apply unless--*
>
> *(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;*
>
> *(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and*
>
> *(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.*
>
> *Explanation.-- For the purposes of this section, debt of other liability means a legally enforceable debt or other liability.*
>
> ***Section 94. Mode in which notice may be given.-***
>
> *Notice of dishonour may be given to a duly authorized agent of the person to whom it is required to be given, or, where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee; may be oral or written; may, if written, be sent by post; and may be in any form; but it must inform the party to whom it is given, either in express terms or by reasonable intendment, that the instrument has been dishonoured, and in what way, and that he will be held liable thereon; and it must be given within a reasonable time after dishonour, at the place of business or (in case such party has no place of business) at the residence of the party for whom it is intended.*
>
> *If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid."*

14. On a conjoint reading of Section 138 and 94 of the N.I. Act, it is clear that the

notice of dishonouring of the cheque should be given in writing and if it is given in writing then as per Section 94 of N.I. Act, it may be given through post for getting benefit of second part of Section 94 of N.I. Act. If it is duly addressed then despite miscarriage, notice will not be deemed to be invalid. Therefore, Section 94 of N.I. Act though provides discretion that the written notice may be sent through post, it does not mandatorily provides that it should be sent through post. The word "may, if written, be sent by post" has some meaning. The word "may" normally implies directory, but sometimes it may be mandatory. In the ***Maxwell on Interpretation of Statutes, 11th Edition***, at Page No. 231, the principle is stated as under:-

> *"Statutes which authorize persons to do acts for the benefit of others or, as it is sometimes said, for the public good or advancement of justice, have often given rise to controversy when conferring the authority in terms simply enabling and not mandatory. For enacting that they 'may' or 'shall, if they have fit', or, 'shall have power', or that 'it shall be lawful' for them to do such acts, 'statute appears to use the language of some permission, but it has been so often decided as to have become an axiom that in such cases such expression may have - to see the list - compensatory force, and so would seen to be modified by the judicial exposition. (emphasis applied)"*

15. Therefore, from the above interpretation, it is clear that if "may" has been used for public good or advancement of justice by authorizing an authority only then the word "may" be read as mandatory and not directory otherwise the word "may" shall be treated as enabling provision that permits a discretion. In the case of ***State of U.P. vs. Jogendra Singh; AIR 1963 SC 1618,*** the Apex Court observed that the word "may" or "shall" in the light of the context whether a discretion is conferred on a public authority coupled with an obligation the word "may" which denotes discretion should be construed to mean a command and sometimes the legislature on whom power and obligation is intended to be conferred or imposed. Paragraph No.8 of the above judgement is quoted as Under:-

> *"**8.** Rule 4(2) deals with the class of gazetted government servants and gives them the right to make a request to the Governor that their cases should be referred to the Tribunal in respect of matters specified in clauses (a) to (d) of sub-rule (1). The question for our decision is whether like the word "may" in Rule 4(1) which confers the discretion on the Governor, the word "may" in sub-rule (2) confers the discretion on him, or does the word "may" in sub-rule (2) really mean "shall" or "must"? There is no doubt that the word "may" generally does not mean "must" or "shall". But it is well settled that the word "may" is capable of meaning "must" or "shall" in the light of the context. It is also clear that where a discretion is conferred upon a public authority coupled with an obligation, the word "may" which denotes discretion should be construed to mean a command. Sometimes, the legislature uses the word "may" out of deference to the high status of the authority on whom the power and the obligation are intended to be conferred and imposed. In the present case, it is the context which is decisive. The whole purpose of Rule 4(2) would be frustrated if the word "may" in the said rule receives the same construction as in sub-rule (1). It is because in regard to gazetted government servants the discretion had already been given to the Governor to refer their cases to the Tribunal that the rule making authority wanted to make a special provision in respect of them as distinguished from other government servants falling under Rule 4(1) and Rule 4(2) has been*

prescribed, otherwise Rule 4(2) would be wholly redundant. In other words, the plain and unambiguous object of enacting Rule 4(2) is to provide an option to the gazetted government servants to request the Governor that their cases should be tried by a tribunal and not otherwise. The rule-making authority presumably thought that having regard to the status of the gazetted government servants, it would be legitimate to give such an option to them. Therefore, we feel no difficulty in accepting the view taken by the High Court that Rule 4(2) imposes an obligation on the Governor to grant a request made by the gazetted government servant that his case should be referred to the Tribunal under the Rules. Such a request was admittedly made by the respondent and has not been granted. Therefore, we are satisfied that the High Court was right in quashing the proceedings proposed to be taken by the appellant against the respondent otherwise than by referring his case to the Tribunal under the Rules."

16. In Section 94 of the N.I. Act the word used "may" for sending the written notice through post is directory and not mandatory. Therefore, option of sending the written notice through courier service is not barred under Section 94 N.I. Act. The only advantage of sending the notice through the post is provided in the second part of Section 94 of N.I. Act, which means if the notice is sent through the post at correct address, even if the same could not reach at the destination, it will not be deemed to be invalid. The word "service through post" has been defined in Section 27 of the General Clauses Act which provides, for getting the benefit of presumption of service of notice it should be sent through registered post. Section 27 of the General Clauses Act is quoted as under:-

*"**Section 27. Meaning of service by post.-***

Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or send or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

17. From the perusal of Sections 138 and 94 of the N.I. Act as well as Section 4 of I.T. Act, it is clear that notice under Section 138 N.I. Act can be sent either through post or in electronic form. The service by post has been defined in Section 27 of the General Clauses Act, which provides only registered post. Speed posts are also registered post. However, from the above analysis, it is clear that courier service has not been excluded under Section 94 N.I. Act, but to get the benefit under Section 27 of the General Clauses Act, a notice must be delivered through registered post, and courier service cannot be deemed registered post. Therefore, until the amendment is made under Section 27 of the General Clauses Act for including courier service apart from registered post, the presumption of service of registered post under Section 27 of the General Clauses Act cannot be invoked for the notice sent through courier service. Therefore, the presumption of delivery of service of notice under Section 27 of the General Clauses Act can be invoked only when the notice is sent through registered post and not through courier service. This

issue was also considered by the Coordinate Benches of this Court in the case of ***Deepak Kuamr and another vs. State of U.P. and another; 2006 SCC OnLine All 1536*** as well as in ***Ali Jan vs. State of U.P. and another; 2020 SCC Online All 75***. Paragraph 9 of the judgement ***Deepak Kuamr and another vs. State of U.P. (supra*)** is quoted as under:-

> *"9. Thus, the wordings of Section 27 of the General Clauses Act clearly indicates that this section deals only with service by 'Post' and that too "registered service" when such a service is contemplated by the Act itself. Attour. No other mode of service is embraced in Section 27. The condition precedent for the applicability of this section are firstly, that the service must be provided by the Act itself and secondly, that such "service shall be deemed to be affected by properly addressing, pre-paying and posting by registered post" (Emphasis mine). Unless the twin conditions are satisfied Section 27 of the General Clauses Act will not apply. In the present case the second condition is not satisfied and therefore the service of notice on the applicants cannot be presumed. Since the legislature has kept service by private courier outside the purview of the Section 27 of the General Clauses Act, therefore the Courts cannot implant such presumption of service into that section and rightly so because private courier services are privately run businesses without any authenticity of service. (Emphasis mine) consequently, the contention of the learned counsel for the applicant that the service should be presumed in the present case cannot be accepted as it does not hold good on the provision of the statute itself and has to be rejected. Resuitantly, the submission of the counsel for the applicant that in the present case no offence is made out holds good and deserves to be accepted and I hold so."*

18. The main object of the N.I. Act is to legalize the system by which the instruments contemplated by it could pass from hand to hand by negotiation like any other goods. Hon'ble Apex Court in the case of ***Shri Ishar Alloy Steels Ltd. vs. Jayaswals Neco Ltd.; 2001 (3) SCC 609***, also observed that the purpose of the Act was to present an orderly and authoritative statement of leading rules of law relating to N.I. Act. Therefore, the basic purpose of sending demand notice under Section 138 N.I. Act is to inform the drawer of the cheque about the dishonouring of the cheque and giving him opportunity to pay the cheque amount. Though under Section 94 of N.I. Act provides for sending notice on dishonouring of the bill of exchange (which also includes cheques) either oral or written, but Section 138 N.I. Act provides explicitly that written notice should be sent to drawer of cheque after bouncing of the same. Considering the object of the N.I. Act, excluding the courier service, which is faster than the registered post will, amount to defeating the basic object of the N.I. Act.

19. Considering the effectiveness of certain approved courier services, the legislature has also amended Order V Rule 9 of C.P.C. by including email service as well as courier service for effective service of summons. This amendment was made in the year 2002 in Order V Rule 9 of C.P.C. Order V Rule 9 of CPC is quoted as under:-

> *" **9. Delivery of summons by Court**.—(1) Where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the*

summons shall, unless the Court otherwise directs, be delivered or sent either to the proper officer to be served by him or one of his subordinates or to ***such courier services as are approved by the Court****.*

(2) The proper officer may be an officer of a Court other than that in which the suit is instituted, and, where he is such an officer, the summons may be sent to him in such manner as the Court may direct.

(3) The services of summons may be made by delivering or transmitting a copy thereof by registered post acknowledgment due, addressed to the defendant or his agent empowered to accept the service or by speed post or ***by such courier services*** *as are approved by the High Court or by the Court referred to in sub-rule (1) or by any other means of transmission of documents (including fax message or electronic mail service) provided by the rules made by the High Court:*

Provided that the service of summons under this sub-rule shall be made at the expenses of the plaintiff.

(4) Notwithstanding anything contained in sub-rule (1), where a defendant resides outside the jurisdiction of the Court in which the suit is instituted, and the Court directs that the service of summons on that defendant may be made by such mode of service of summons as is referred to in sub-rule (3) (except by registered post acknowledgment due), the provisions of Rule 21 shall not apply.

(5) When an acknowledgment or any other receipt purporting to be signed by the defendant or his agent is received by the Court or postal article containing the summons is received back by the Court with an endorsement purporting to have been made by a postal employee or by any person authorised by the courier service to the effect that the defendant or his agent had refused to take delivery of the postal article containing the summons or had refused to accept the summons by any other means specified in sub-rule (3) when tendered or transmitted to him, the Court issuing the summons shall declare that the summons had been duly served on the defendant:

Provided that where the summons was properly addressed, pre-paid and duly sent by registered post acknowledgment due, the declaration referred to in this sub-rule shall be made notwithstanding the fact that the acknowledgment having been lost or mislaid, or for any other reason, has not been received by the Court within thirty days from the date of issue of summons.

(6) The High Court or the District Judge, as the case may be, shall prepare a panel of courier agencies for the purposes of sub-rule (1)."

20. From the perusal of Rule 9(1) and (3) of Order V of C.P.C., it is clear that apart from registered post and speed post, courier service, which was approved by the Court, is also declared a valid service. However, the complaint proceeding under N.I. Act is quasi-civil in nature, which has the basic object of compensatory and not punitive, and the provision of Cr.P.C. has been adopted for a limited purpose; for expeditious disposal of complaints under Section 138 N.I. Act, but before filing a complaint, sending the demand notice is not part of the complaint proceeding under Section 138 N.I. Act. Therefore, the procedure of sending summons in criminal matters will not affect the demand notice sent under Section 138 N.I. Act before

filing of the complaint.

21. Therefore, considering the fact that the legislature has itself amended the C.P.C. in 2002 for service of summons through courier service and mode of service for written notice through courier service was not excluded by Section 94 of N.I. Act and the requirement in Section 138 N.I. Act is only written notice. **Therefore, the notice sent through the courier service is valid service under Section 138 N.I. Act. However, for the purpose of getting the benefit of presumption of service under Section 27 of the General Clauses Act, notice must be sent through registered post.**

22. In the present case, though in the complaint it is mentioned that the notice was sent through speed post, the tracking report, as well as the receipt of sending the notice, shows that the notice was sent through courier service but this is a disputed question of fact that cannot be decided at this stage. Even otherwise, it is also mentioned in the complaint that the notice was also sent through WhatsApp on the mobile number of the applicant; therefore, as per Section 13 of the I.T. Act, prima facie service of notice is deemed to be sufficient on the date when the notice itself was sent through WhatsApp. Therefore, in this case, there is no need to invoke the presumption under Section 27 of the General Clauses Act for deemed service. However, the applicant can rebut this presumption during the trial.

23. So far as the fourth question, whether service of notice through WhatsApp cannot be said to be an effective service unless rules for service is prescribed, is concerned, this question is itself clear from Section 13 of the I.T. Act, which provides the date and time when the delivery of notice sent electronically will be presumed. Sections 4 and 13 of the I.T. Act are quoted as under:-

> ***"Section 4. Legal recognition of electronic records.***
>
> *Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law,* ***such requirement shall be deemed to have been satisfied if such information or matter is--***
>
> ***(a) rendered or made available in an electronic form; and***
>
> *(b) accessible so as to be usable for a subsequent reference.*
>
> ***Section 13.Time and place of despatch and receipt of electronic record.***
>
> *(1) Save as otherwise agreed to between the originator and the addressee, the* ***dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator.***
>
> *(2) Save as otherwise agreed between the originator and the addressee,* ***the time of receipt of an electronic record*** *shall be determined as follows, namely:--*
>
> *(a) if the addressee has designated a computer resource for the purpose of receiving*

electronic records,--

(i) receipt occurs at the time when the electronic record enters the designated computer resource; or

(ii) if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee;

(b) if the addressee has not designated a computer resource along with specified timings, if any, ***receipt occurs when the electronic record enters the computer resource of the addressee.***

(3) Save as otherwise agreed to between the originator and the addressee, an ***electronic record is deemed to be despatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business.***

(4) The provisions of sub-section (2) shall apply notwithstanding that the place where the computer resource is located may be different from the place where the electronic record is deemed to have been received under sub-section (3).

(5) For the purposes of this section,--

(a) if the originator or the addressee has more than one place of business, the principal place of business, shall be the place of business;

(b) if the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business;

(c) "usual place of residence", in relation to a body corporate, means the place where it is registered."

24. From the perusal of Section 13(2) of the I.T. Act, it is explicit that it has provided the manner and procedure for dispatch and receipt of electronic records as well as the time of receipt of the same. This Court has already held in the case of ***Rajendra vs. State of U.P. and another; Application under Section 482 No. 45953 of 2023*** that notices, sent through email and WhatsApp are valid notices for the purpose of Section 138 N.I. Act. For the reliability of electronic signatures, electronic record as well as for security, the Central Government has already framed rules under 87 of the I.T. Act. Therefore, there is no requirement to frame separate rules for service of notice under the I.T. Act.

25. As far as the Bombay High Court Service of Processes by Electronic Mail Services Rules, 2017, is concerned, these rules are framed in the exercise of power under Order V Rule 9 C.P.C. for commercial courts, which is a civil proceeding. However, the process of sending demand notice under Section 138 of N.I. Act is not the part of any judicial proceeding but prior to initiation of a judicial proceeding.

26. From the perusal of averments in the complaint, a prima facie case is made out for presumption under Section 139 N.I. Act. However, the applicant can raise this issue during the trial to rebut the presumption.

27. After the above analysis, this Court answered the aforesaid questions as under:-

(i) When the complaint under N.I. Act was dismissed for want of prosecution at the initial stage of issuing summons, then the Court concerned has the authority to recall the same and the bar of Section 362 Cr.P.C. will not be applied;

(ii) When a conditional cheque is presented before the bank without prior notice and dishonours, even then the liability under Section 138 N.I. Act will be attracted;

(iii) Notice of demand through courier service is valid service for Section 138 N.I. Act, but the presumption of service under Section 27 of the General Clauses Act cannot be invoked for the notice sent through courier till the amendment is made under Section 27 of General Clauses Act so as to include the courier service apart from registered post and;

(iv) Service of notice through WhatsApp under Section 138 N.I. Act will be deemed to be served as per the procedure of Section 13 of I.T. Act and no separate rule for prescribing the delivery of service is required.

28. In view of the above analysis, this Court is of the view that the submissions of learned counsel for the applicant have no force. Accordingly, the application is **dismissed**.

29. This Court also finds that not only in the present case but in several cases, the order sheets are being written by the concerned Court or concerned official in illegible handwriting, making it difficult to understand what they have written. Therefore, it is directed to all the District Judges of U.P. to apprise all their subordinate judicial officers that while writing the order sheet, the order must be written in clearly legible handwriting, or it should be typed.

30. Registrar (compliance) is directed to send a copy of this order to all the District Judges of Uttar Pradesh, who will apprise their subordinate judicial officers that the order sheet of the case should be written in neat and legible handwriting or typed form.

Order Date :- 6.5.2024
Vandana