

A M/S. AJEET SEEDS LTD.  
v.  
K. GOPALA KRISHNAIAH  
(Criminal Appeal No.1523 of 2014)

B JULY 16, 2014.

[**RANJANA PRAKASH DESAI AND N.V. RAMANA, JJ.**]

*NEGOTIABLE INSTRUMENTS ACT, 1881:*

C *s. 138 – Complaint of dishonour of cheque – Service of notice u/s 138 and proof thereof — Held: It is not necessary to aver in the complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice –*  
D *Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business – High Court clearly erred in quashing the complaint on the ground that there was no recital in the complaint that the notice u/s 138 of the NI Act was served upon*  
E *the accused – It also erred in quashing the complaint on the ground that there was no proof either that the notice was served or it was returned unserved/unclaimed – That is a matter of evidence – Section 114 of Evidence Act enables the court to presume that in the common course of natural*  
F *events, the communication would have been delivered at the address of the addressee – Section 27 of General Clauses Act gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post – Evidence Act, 1872 – s.114 – General Clauses Act, 1897 – s.27.*  
G

**The complaint filed by the complainant against the respondent of offence u/s 138 of the Negotiable Instruments Act, 1881 was quashed by the High Court on**

H

the petition u/s 482 Cr.P.C. filed by the respondent, on the grounds that there were no recitals in the complaint to demonstrate that the notice issued u/s 138 of the Act by the complainant was served upon the respondent-accused on any specified date and that there was no proof that either the notice was served or it was returned unserved/unclaimed and that there was no averment in the complaint about the same.

Allowing the appeal, the Court

HELD: 1.1. Section 114 of the Evidence Act enables the Court to presume that in the common course of natural events, the communication would have been delivered at the address of the addressee. Section 27 of the General Clauses Act gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. It is not necessary to aver in the complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business. [para 10] [888-E-G]

*C. C. Alavi Haji v. Palapetty Muhammed & Anr.* 2007 (7) SCR 326 = 2007 (6) SCC 555; *D. Vinod Shivappa v. Nanda Belliappa* 2006 (2) Suppl. SCR 1008 = 2006 (6) SCC 456; and *K. Bhaskaran v. Sankaran Vaidhyan Balan* 1999 (3) Suppl. SCR 271 = 1999 (7) SCC 510 – relied on

*Shakti Travel & Tours v. State of Bihar & Anr.* (2002) 9 SCC 415 – held inapplicable.

1.2. In the facts of the instant case, the High Court clearly erred in quashing the complaint on the ground

A that there was no recital in the complaint that the notice u/s 138 of the NI Act was served upon the accused. The High Court also erred in quashing the complaint on the ground that there was no proof either that the notice was served or it was returned unserved/unclaimed. That is a matter of evidence. In the circumstances, the impugned judgment is set aside and the complaint restored.[para 11 and 13] [888-H; 889-A-B, F]

**Case Law Reference :**

C	(2002) 9 SCC 415	held inapplicable	para 3
	2007 (7) SCR 326	relied on	para 4
	2006 (2) Suppl. SCR 1008	relied on	para 6
D	1999 (3) Suppl. SCR 271	relied on	para 7

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1523 of 2014.

E From the Judgment and Order dated 21.03.2013 in Criminal Writ Petition No. 1131/2012 of the High Court of Bombay Bench at Aurangabad.

Sudhanshu S. Choudhari and Vaisalya Vigya for the Appellant.

F Amol Nirmalkumar Suryawanshi for the Respondent.

The Judgment of the Court was delivered by

(SMT.) RANJANA PRAKASH DESAI, J. 1. Leave granted.

G

2. The appellant is the complainant. He has challenged the judgment and order dated 21/03/2013 passed by the High Court of Judicature of Bombay, Bench at Aurangabad in Criminal Writ Petition No.1131 of 2012 whereby the High Court has quashed the complaint filed by him under Section 138 of

H

the Negotiable Instruments Act, 1881 ('the NI Act') being SCC No. 4118 of 2007 in the court of Chief Judicial Magistrate, First Class, Aurangabad. A

3. For the purpose of disposal of this appeal, it is not necessary to narrate all the facts of the case. Suffice it to say that the complaint was filed alleging that the cheque issued by the respondent-accused for repayment of a legally recoverable debt bounced. On 17/6/2011 learned Magistrate issued process. The respondent-accused filed a criminal revision application before the Additional Sessions Judge, Aurangabad mainly on the assertion that the demand notice was not served on him. The said criminal revision application was rejected. Being aggrieved by the said order, the respondent-accused filed criminal writ petition in the High Court under Section 482 of the Code of Criminal Procedure, 1973 ('the Cr.P.C.'). The High Court quashed the complaint on a short ground that on reading verification of the complaint dated 17/6/2011, it is explicit that there are no recitals to demonstrate that the notice issued under Section 138 of the NI Act by the complainant was served upon the respondent-accused on any specific date. The High Court observed that there is no proof that either the notice was served or it was returned unserved/unclaimed and that that there is no averment in the complaint about the same. The High Court concluded that, therefore, there could not be a cause of action to prosecute the accused under Section 138 of the NI Act. For coming to this conclusion, the High Court relied on the order of this Court in *Shakti Travel & Tours v. State of Bihar & Anr*<sup>1</sup>. The extract on which the High Court relied upon could be quoted : B  
C  
D  
E  
F

*"2. The accused who is the appellant, assails the order of the High Court refusing to quash the complaint filed under Section 138 of the Negotiable Instruments Act. The only ground on which the learned counsel for the appellant prays for quashing of the complaint is that on* G

---

1. (2002) 9 SCC 415. H

A *the assertions made in paragraph 8 of the complaint, it*  
*must be held that notice has not been served and,*  
*therefore, an application under Section 138 could not*  
*have been maintained. Undoubtedly, the accused has a*  
 B *right to pay the money within 15 days from the date of*  
*the service of notice and only when it fails to pay, is it*  
*open for the complainant to file a case under Section 138*  
*of the Negotiable Instruments Act. That being the*  
*position and in the complaint itself having not been*  
 C *mentioned that the notice has been served, on the*  
*assertions made in para 8, the complainant itself is not*  
*maintainable. We accordingly quash the complaint.”*

4. We have heard, at some length, Mr. S.S. Choudhari,  
 learned counsel appearing for the appellant. Counsel submitted  
 D that the High Court has erred in quashing the complaint on the  
 ground that complaint is silent about service of notice. Counsel  
 submitted that in *C.C. Alavi Haji v. Palapetty Muhammed &*  
*Anr.*<sup>2</sup>, a three Judge Bench of this Court has conclusively  
 E decided this issue. It is held in this case that it is not necessary  
 to aver in the complaint that notice was served upon the  
 F accused. The impugned order, therefore, deserves to be set  
 aside.

5. We are inclined to agree with the counsel for the  
 G appellant.

F 6. In *C.C. Alavi Haji*, a three-Judge Bench of this Court  
 was dealing with the question referred by a two-Judge Bench  
 for consideration. The referring Bench was of the view that in  
 D. Vinod Shivappa v. Nanda Belliappa<sup>3</sup>, this Court did not take  
 G note of Section 114 of the Evidence Act in its proper  
 perspective. It felt that presumption under Section 114 of the  
 Evidence Act being a rebuttable presumption, the complainant  
 should make certain necessary averments to raise the

---

2. (2007) 6 SCC 555.

H 3. (2006) 6 SCC 456.

presumption of service of notice; that it was not sufficient for a complainant to state that a notice was sent by registered post and that the notice was returned with the endorsement 'out of station' and that there should be a further averment that the addressee-drawer had deliberately avoided receiving the notice or that the addressee had knowledge of the notice, for raising a presumption under Section 114 of the Evidence Act. The following question was, therefore, referred to the larger Bench for consideration.

7. Dealing with the above question, this Court referred to *K. Bhaskaran v. Sankaran Vaidhyan Balan*<sup>4</sup>, where this Court referred to Section 27 of the General Clauses Act, 1897 ('the GC Act') and observed that since the NI Act does not require that notice should only be given by 'post' in a case where the sender has despatched the notice by post with correct address written on it, Section 27 of the GC Act could be profitably imported and in such a situation service of notice is deemed to have been effected on the sender unless he proves that it was really not served and that he was not responsible for such non-service.

8. This Court then referred to *Vinod Shivappa's* case, where the above aspects have been highlighted. This Court quoted the following paragraph from *Vinod Shivappa* with approval.

*"15. We cannot also lose sight of the fact that the drawer may by dubious means manage to get an incorrect endorsement made on the envelope that the premises has been found locked or that the addressee was not available at the time when postman went for delivery of the letter. It may be that the address is correct and even the addressee is available but a wrong endorsement is manipulated by the addressee. In such a case, if the facts are proved, it may amount to refusal of the notice. If the*

4. (1999) 7 SCC 510.

A complainant is able to prove that the drawer of the  
cheque knew about the notice and deliberately evaded  
service and got a false endorsement made only to defeat  
the process of law, the Court shall presume service of  
notice. This, however, is a matter of evidence and proof.  
B Thus even in a case where the notice is returned with the  
endorsement that the premises has always been found  
locked or the addressee was not available at the time of  
postal delivery, it will be open to the complainant to  
prove at the trial by evidence that the endorsement is not  
C correct and that the addressee, namely the drawer of the  
cheque, with knowledge of the notice had deliberately  
avoided to receive notice. Therefore, it would be pre-  
mature at the stage of issuance of process, to move the  
High Court for quashing of the proceeding under Section  
D 482 of the Code of Criminal Procedure. The question as  
to whether the service of notice has been fraudulently  
refused by unscrupulous means is a question of fact to  
be decided on the basis of evidence. In such a case the  
High Court ought not to exercise its jurisdiction under  
E Section 482 of the Code of Criminal Procedure.”

9. This Court then explained the nature of presumptions  
under Section 114 of the Evidence Act and under Section 27  
of the GC Act and pointed out how these two presumptions  
are to be employed while considering the question of service  
F of notice under Section 138 of the NI Act. The relevant  
paragraphs read as under:

G “13. According to Section 114 of the Act, read with  
Illustration (f) thereunder, when it appears to the Court  
that the common course of business renders it probable  
that a thing would happen, the Court may draw  
presumption that the thing would have happened, unless  
there are circumstances in a particular case to show that  
the common course of business was not followed. Thus,  
H Section 114 enables the Court to presume the existence

of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case. Consequently, the court can presume that the common course of business has been followed in particular cases. When applied to communications sent by post, Section 114 enables the Court to presume that in the common course of natural events, the communication would have been delivered at the address of the addressee. But the presumption that is raised under Section 27 of the G.C. Act is a far stronger presumption. Further, while Section 114 of Evidence Act refers to a general presumption, Section 27 refers to a specific presumption. For the sake of ready reference, Section 27 of G.C. Act is extracted below:

*"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".*

14. Section 27 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. In view of the said presumption, when stating that a notice has been sent by registered post to the address of the drawer, it is unnecessary to further aver in the complaint that in spite

A *of the return of the notice unserved, it is deemed to have  
been served or that the addressee is deemed to have  
knowledge of the notice. Unless and until the contrary is  
proved by the addressee, service of notice is deemed to  
have been effected at the time at which the letter would  
B have been delivered in the ordinary course of business.  
This Court has already held that when a notice is sent  
by registered post and is returned with a postal  
endorsement 'refused' or 'not available in the house' or  
'house locked' or 'shop closed' or 'addressee not in  
C station', due service has to be presumed. [Vide Jagdish  
Singh Vs. Natthu Singh (1992) 1 SCC 647; State of M.P.  
Vs. Hiralal & Ors. (1996) 7 SCC 523 and V.Raja Kumari  
Vs. P.Subbarama Naidu & Anr. (2004) 8 SCC 74] It is,  
D therefore, manifest that in view of the presumption  
available under Section 27 of the Act, it is not necessary  
to aver in the complaint under Section 138 of the Act that  
service of notice was evaded by the accused or that the  
'accused had a role to play in the return of the notice  
unserved.'*

E 10. It is thus clear that Section 114 of the Evidence Act  
enables the Court to presume that in the common course of  
natural events, the communication would have been delivered  
at the address of the addressee. Section 27 of the GC Act  
gives rise to a presumption that service of notice has been  
F effected when it is sent to the correct address by registered  
post. It is not necessary to aver in the complaint that in spite  
of the return of the notice unserved, it is deemed to have been  
served or that the addressee is deemed to have knowledge of  
the notice. Unless and until the contrary is proved by the  
G addressee, service of notice is deemed to have been effected  
at the time at which the letter would have been delivered in the  
ordinary course of business.

H 11. Applying the above conclusions to the facts of this  
case, it must be held that the High Court clearly erred in

quashing the complaint on the ground that there was no recital in the complaint that the notice under Section 138 of the NI Act was served upon the accused. The High Court also erred in quashing the complaint on the ground that there was no proof either that the notice was served or it was returned unserved/unclaimed. That is a matter of evidence. We must mention that in *C.C. Alavi Haji*, this Court did not deviate from the view taken in *Vinod Shivappa*, but reiterated the view expressed therein with certain clarification. We have already quoted the relevant paragraphs from *Vinod Shivappa* where this Court has held that service of notice is a matter of evidence and proof and it would be premature at the stage of issuance of process to move the High Court for quashing of the proceeding under Section 482 of the Cr.P.C. These observations are squarely attracted to the present case. The High Court's reliance on an order passed by a two-Judge Bench in *Shakti Travel & Tours* is misplaced. The order in *Shakti Travel & Tours* does not give any idea about the factual matrix of that case. It does not advert to rival submissions. It cannot be said therefore that it lays down any law. In any case in *C.C. Alavi Haji*, to which we have made a reference, the three-Judge Bench has conclusively decided the issue. In our opinion, the judgment of the two-Judge Bench in *Shakti Travel & Tours* does not hold the field any more.

13. In the circumstances, the impugned judgment is set aside and the instant complaint is restored. The appeal is allowed.

Rajendra Prasad

Appeal allowed.