

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 561 OF 1999

Vilasrao Shripatrao Patil
R/at Laxmitirth Vasahat,
Kolhapur

.. Appellant

v/s.

1. Pratapsingh Ranojirao Desai
R/at Amrutras Kadam
3/B, Vidyut Nagar, Near Kavadewadi,
Koregaon Park, Pune – 1

2.The State of Maharashtra

.. Respondents

Mr. Gajanan M. Savagave, for the appellant
Mr. J.H. Ramugade, APP for the respondent State

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED: 28th AUGUST, 2015.**

JUDGMENT :-

1. Heard learned Counsel for the appellant, Mr. Ramugade,
learned APP for the respondent State.

2. This appeal is directed against the judgment dated and
order dated 14.06.1999 in Criminal Case No.13317 of 1994

whereby the learned Judicial Magistrate, First Class, Kolhapur has acquitted the respondent-accused for offence under Section 138 of the Negotiable Instrument Act.

3. With the assistance of learned Counsel for the applicant as well as learned APP, I have gone through the evidence on record.

4. The appellant herein was a complainant in Criminal Case No.13317 of 1992 filed against the respondent no.1 under Section 138 of the Negotiable Instrument Act. By the impugned judgment dated 14.06.1999, the learned Magistrate acquitted the accused for the offence punishable under Section 138 of the N.I. Act mainly on the ground that the appellant – complainant had not issued statutory notice as required under Section 138 of the N.I. Act.

5. Learned Counsel submits that Notice dated 13.05.1994 as envisaged under Section 138 of the N.I. Act was issued to the respondent no.1 - accused and the same was duly received by one

Amrutrao. He has further stated that during the said period, the respondent no.1 was residing in the house of Amrutrao at Pune. He, therefore, contends that there was valid service of the statutory notice and on this count alone, the findings of the learned trial Court are not sustainable.

6. Section 138 of the N.I. Act has been analysed by the Apex Court in ***Kusum Ingots & Alloys Ltd. Vs. Pennar Peterson Securities Ltd. (2000) 2 SCC 745***, and it is held that the following ingredients are required to be satisfied for making out a case under Section 138 of the N.I. Act, which read thus :-

- “(i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for the discharge of any debt or other liability;*
- (ii) that 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;*
- (iii) the cheque is returned by the bank unpaid, either because the amount of money standing to the credit of the 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 the bank;*
- (iv) the payee or the holder in due course of the cheque 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 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(v) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.”

7. The offence under Section 138 of the Ni.I. Act would be completed only when all the above components are satisfied. Issuance of notice, in writing, to the drawer of the cheque is one of the essential components of Section 138 of the N.I. Act. As it has been held by the Apex Court in ***Central Bank of India & Anr. Vs. Saxons Farms and Ors. 1999(8) SCC 221***, the object of the notice is to give a chance to the drawer of the cheque to rectify his omission and also to protect honest drawer. Service of notice of demand in clause (b) of the proviso to Section 138 is a condition precedence for filing a complaint under Section 138 of the N.I. Act.

8. Reverting to the fact of the present case, the appellant – complainant had deposed that he had given a notice dated

13.05.1994 to the respondent no.1 herein through his advocate. He had produced the copy of the notice at Exh.49. PW-1 had stated that the said notice was received by one Asmita Amrutrao Kadam on 23rd May, 1994 and that he could identify her signature. He has deposed that the accused was residing in the house of Amrutrao Kadam, the father of Asmita. He had, therefore, issued the notice on the said address. The appellant – PW-1 complainant had further stated that earlier he used to send letters on the said address.

9. It is pertinent to note that the copy of the notice at Exh.49, states the address of the respondent no.1 as Nipaniwada, Nipani, Tal. Chikodi, Dist. Belgaum. PW-1 complainant had admitted in his cross-examination that the respondent no.1 accused was a permanent resident of Nipani. He has also admitted that in the Regular Civil Suit No.594 of 1993, he had given the address of the accused as a resident of Nipani. He had further admitted that he had filed the affidavit in the said civil suit wherein he had

solemnly affirmed that the respondent no.1 was a permanent resident of Nipani. He has stated that he has no documents to show that the respondent no.1 accused was a resident of Pune.

10. There is no evidence on record to prove that the accused was at any time residing at Pune. On the contrary, evidence of the appellant – complainant clearly reveals that the respondent no.1 accused is a permanent resident of Nipani, despite which he had sent the notice under Section 138 of the N.I. Act at the address of one Amrutrao Kadam, at Pune. It is also pertinent to note that the appellant – complainant has stated that the said notice was received by one Asmita. He has, however not established the relationship between the said Asmita and the respondent no.1 accused. Under the circumstances, the learned Magistrate was perfectly justified in holding that the complainant has not complied with the mandatory requirement of issuance of notice. The view taken by the learned Magistrate is a possible view and the same does not warrant any interference.

11. Under the circumstances, and in view of the discussion supra, in my considered view, no interference is required in the impugned judgment. The appeal is, therefore, dismissed

(ANUJA PRABHUDESSAI, J.)