

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

CRIMINAL APPEAL NO.522 OF 1998

M/s. Lloyds Metals & Engineers
Ltd., a Company incorporated
under the Companies Act, 1956
having its registered office at Plot
No.A-9/10 (Phase II), MIDC,
Manpada Road, Dombivli (E),
Thane-421 201.

...Appellant

Versus

1.Shri Y.Y. Kelkar, Managing
partner of Kelsen Industries,Flat
No.A-1, Aradhana Society, Behind
S.T. Bus Stand, Pune 411 005.

2. State of Maharashtra

...Respondents

.....

Mr. Rajesh Maravoor i/b. M/s. Consulta Juris and M/s.
Maravoor Wamurkar & Co. for the Appellant.
Ms R.V. Newton, APP for Respondent No.2 -State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 7th SEPTEMBER, 2015.

ORAL JUDGMENT :

This appeal is filed against the judgment dated 31st March, 1998 passed in S.C.C. No.181 of 1997 whereby the learned Judicial Magistrate, First Class, Pune, acquitted Respondent No.1 of the offence punishable under section 138 of the Negotiable Instruments Act.

2. The case of the Appellant /complainant was that Respondent No.1 had issued to him two cheques for Rs.29 lakhs each dated 15th September, 1996, towards discharge of monetary liability of goods purchased from him. Said two cheques were dishonoured. It was alleged by the Appellant-complainant that he had issued the statutory notice and that since the said notice had not returned it was deemed to have been served on Respondent No.1-accused. The Appellant -complainant claimed that the Respondent No.1-accused had not paid the cheque amount hence, he initiated proceedings under section 138 of the Negotiable Instruments Act.

3. The Respondent No.1-accused had pleaded not guilty and claimed to be tried. Upon considering the evidence adduced by the Appellant- complainant and the submissions advanced by the respective counsel for the Applicant-complainant and the Respondent No.1-accused, the learned Magistrate held that the Applicant-complainant had failed to establish the essential requisites of the offence under section 138 of the Negotiable Instruments Act and hence acquitted the accused.

4. Learned counsel for the Applicant-complainant has submitted that the findings of the learned Magistrate as regards not

proving the cheques return memo and non service of statutory notice are erroneous. He further submitted that the evidence of the PW.2 Arvind Saraf, Deputy Manager, Erandwana Branch, Pune, proves that the cheques were returned for insufficient funds. He has further submitted that evidence of the complainant proves that the notice was sent by Registered post and also under certificate of posting and as such under section 27 of the General Clauses of the Act, the notice is deemed to be served.

5. In the instant case the complainant has placed on record the cheque return memo at Exh.29. The Applicant had also examined PW-2 Arvind Saraf, Deputy Manager, State Bank of India, Erandwana Branch, Pune. He had deposed that the complainant is account holder of State Bank of India of same branch since 1993 and that he had presented cheques at Exhs. 20 and 21 in the Bank on 4.12.1996. He further deposed that the cheques were sent for clearance and the same were returned alongwith the cheque return memo to the account holder. He has produced the same at Exh.29.

6. The next witness PW-3 Baldeosingh Raysinghani deposed that he was in service of State Bank of India, Small Scale Industries Branch, Wakdewadi as Deputy Manager since 1995. He had also

stated that Exhs. 20 and 21 were presented in the Bank and were dishonoured for want of sufficient funds and he had issued memo dated 5th December, 1996 and has produced at Exh.33 regarding dishonour of said cheques. These two witnesses viz. Arvind Saraf and Baldeosingh Raysinghani stated that the cheques were presented in the Bank within the validity period of the cheques and same were returned for insufficient funds.

7. The complainant had deposed that he had sent statutory notice to Respondent No.1 by Registered post as well as under certificate of posting. He has deposed that the complainant company had issued notice to Respondent No.1-accused on 16.12.1996 through its Advocate and called upon the accused to pay the cheques amount. He has stated that said notice was sent through registered post as well as under certificate of posting. He had produced copy of the notice at Exh.22, which was allegedly sent to Respondent No.1-accused. He has deposed that the accused had not paid the cheques amount to the complainant after cross examination. He has admitted that he had not produced the acknowledgment receipt to show that notice was received by the accused.

8. Needless to state that to invoke the deeming provision under section 27 of the General Clauses Act, the complainant was required to establish that he had dispatched the letter by Registered Post at the correct address. In the instant case the complainant had not placed on record the acknowledgment and /or the postal slips. He has also not placed on record the envelope, which was returned unclaimed. There is absolutely no evidence to prove that the complainant had dispatched the notice at the proper address either by R.P.A.D. or by certificate of posting. This being the case learned Magistrate was justified in holding that the complainant has failed to prove the service of notice, which is one of the essential ingredients of section 138 of the Negotiable Instruments Act. The view taken by the learned Magistrate is justifiable and probable. The judgment does not suffer from perversity or illegality. Hence, the judgment cannot be interfered with.

9. In these circumstances, the criminal appeal is hereby dismissed.

(ANUJA PRABHUDESSAI, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed Judgment /order.