

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.375 of 2000**

Vijay Kumar Soni son of Parasram Soni, aged about 37 years, resident of Kankali Para, PS Azad Chowk, Tah. & Distt. Raipur (MP) (Now CG).

---- Appellant

Versus

Lakhanlal Devangan, son of Nandu Devangan, R/o Dangania, House No. 441743 (CG).

---- Respondent

For Appellant	:	None.
For respondent	:	Shri Ashish Shukla, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order On Board

26/10/2016

1. The present appeal has been preferred by the appellant assailing the order dated 09.09.1999 acquitting the respondent-accused from the proceedings under Section 138 of Negotiable Instruments Act (for short NI Act).
2. The case of the prosecution in brief is that, a complaint was lodged by the present petitioner against the respondent on 27.11.1997 which was registered on 03.02.1998 by the court and summons were issued for the respondent to appear and contest the case. In due course of time, charge sheet was framed under Section 138 of NI Act against the respondent and the matter was put to trial. In spite of ample opportunity of appearance being granted to the complainant, he gave his appearance at a late stage and thereafter the accused statement was

recorded and the matter was finally decided on 09.09.1999.

3. A perusal of the record shows that the court below has reached to the conclusion that dismissal of the complaint case resulting in acquittal of the respondent was on account of non compliance of the mandatory statutory provisions under Section 138 of NI Act. Record also shows that it has come before the court below in the course of evidence led by the complainant that the statutory requirement of service of demand notice to the respondent accused has to be served upon the concerned person in accordance with provisions of Section 138 of NI Act.
4. It is also a finding of fact recorded by court below that in the course of cross examination, the complainant has accepted the fact that the demand notice issued by the petitioner-complainant to the respondent-accused could not be served.
5. In the given peculiar facts and circumstances of the case, this court is of the opinion that the court below has not committed any illegality or infirmity nor has it given a perverse finding while rejecting the complaint case against the respondent on account of non service of demand notice mandatorily required to be served upon the respondent-accused in a case under Section 138 of NI Act.
6. Accordingly, the appeal being devoid of merit deserves to be and is hereby dismissed affirming the order passed by the court below.

Sd/-
(P.Sam Koshy)
Judge