

Order Reserved on: 26.07.2017

Order Delivered on : 07.08.2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2017

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

Crl.RC.No.406 of 2017

and Crl.M.P.Nos.3782 to 3784 of 2017

Sujatha Ramanathan

...

Petitioner

-Vs-

Ramya

...

Respondent

Criminal Revision Case is filed under Section 397 read with Section 401 of the Code of Criminal Procedure to call for the records relating to the Judgment passed by the learned XVIII Additional District and Sessions Judge, Chennai, in Crl.A.No.85 of 2016 dated 02.03.2017 dismissing the appeal and confirming the order of the learned Metropolitan Magistrate, Fast Track Court No.III, Saidapet, Chennai, dated 24.02.2016 in C.C.No.10816 of 2008 and to set aside the

For Petitioner : Mr.S.Elambharathi

For Respondent : Mrs.B.Ramya
Party-in-person

JUDGMENT

This Criminal Revision Case was filed against the Judgment of the learned XVIII Additional Sessions Judge, Chennai, in CrI.A.No.85 of 2016 dated 02.03.2017 by which the Judgment made in C.C.No.10816 of 2008 by the learned Metropolitan Magistrate, Fast Track Court No.III, Saidapet, Chennai, dated 24.02.2016, was confirmed.

2.The respondent had filed a complaint before the trial Court under Section 190(1) of the Code of Criminal Procedure (in short "the Code") read with Section 138 of the Negotiable Instruments Act (in short "N.I. Act").

3.According to the said complaint, one Kumar (son of the petitioner) had approached the respondent for a short term loan of Rs.10,00,000/- to meet out the urgent medical expenses. The father of the said Kumar namely, Ramanathan,

is a long time friend of the father of the respondent. The respondent contacted the said Ramanathan and his wife, who is the mother of the said Kumar, namely, Sujatha Ramanathan and conveyed the requisition made by their son Kumar. In turn, the parents of Kumar had stated to the respondent that they did not have the sufficient amount to help their son and therefore, they requested the respondent that if she helped him, the said amount would be repaid by them shortly.

4.Realizing the genuine need of the said three persons, the respondent had paid Rs.10,00,000/- by way of cash to the said Kumar on 09.09.2007. In fact, the said three persons came in person and received the amount from the respondent. For the said amount of Rs.10 lakhs, which was given as hand loan to the said Kumar, the parents of him stood as Guarantors and all of them agreed to repay the amount to the respondent within two months.

5.As assured, they did not come forward to pay back the amount to the respondent. It was repeatedly demanded by the respondent and therefore, all the three persons had

given a Cheque, of course, in the name of the mother of the said Kumar, i.e., Mrs.Sujatha Ramanathan, i.e., the petitioner in an S.B.A/c of Indian Overseas Bank, Stella Marries College Branch, Chennai-86, bearing No.712983, dated 05.11.2007 for a sum of Rs.9,25,000/-, being the part payment to clear the debts to the respondent.

6.The said cheque was presented by the respondent at her Bank namely, Canara Bank, Royapettah Branch, Chennai-14 on 11.11.2007. However, the cheque was returned dishonoured for the reason that "Payment stopped by the drawer". The said Memo of the drawer's Bank dated 13.11.2007 along with the intimation of the respondent's Bank dated 14.11.2007, was received by the respondent with the returned cheque. Thereafter, the respondent caused a notice to all the three persons demanding them to pay back the said amount of Rs.9,25,000/- being the cheque amount, on 21.11.2007. The said notice sent by the respondent was served on all the three persons on 22.11.2017. Even after the receipt of notice, the petitioner and her son and husband namely, Kumar and Ramanathan, did not come forward to

settle the amount. Hence, the respondent had filed the said complaint before the trial Court under Section 138 of the Negotiable Instruments Act.

7. In fact, the respondent had issued a single notice to all the three persons even though the cheque was issued in the name of Sujatha Ramanathan, the mother of Kumar, the petitioner herein. Therefore, the respondent filed the complaint against all the three persons by arrayed them as A1, A2 and A3.

8. The trial Court, after having completed the trial, had ultimately rendered the Judgment in C.C.No.10816 of 2008 on 24.02.2016. By the said Judgment, the trial Court has acquitted A1-Ramanathan and A3-Kumar, as the cheque was not issued in their names, however, convicted A2-Sujatha Ramanathan and sentenced her to undergo Simple Imprisonment for a period of six months and also directed her to pay the cheque amount as compensation in terms of Section 255(2) of the Code.

9. Aggrieved over the said Judgment of the trial Court, the petitioner had filed an Appeal before the First Appellate Court in Crl.A.No.85 of 2016. The First Appellate Court has also, having considered the merits of the case, dismissed the said appeal on 02.03.2017 by which confirming the order of the trial Court. Aggrieved over the said order passed by the First Appellate Court confirming the conviction given by the trial Court, the petitioner has approached this Court with this present revision case.

10. The main defence taken by the petitioner before the trial Court is that the respondent did not have the means to part with a huge sum of Rs.10 lakhs by way of hand loan to the petitioner and her family members i.e., her son and her husband. Also, the petitioner had taken a defence that even though a cheque was issued in the name of the petitioner, there was no statutory notice issued by the respondent to the petitioner, as the notice issued by the respondent consisting of all the three names including the petitioner, was not received, either by the petitioner or the other two accused i.e., A1 and

A3, and the same was received by some other person and therefore, in the absence of statutory notice, which is one of the necessary ingredients to proceed under Section 138 of the NI Act, the very complaint filed before the trial Court itself is not maintainable and therefore, the same should be dismissed.

11.The petitioner had also taken a defence that there was an enmity between the family of the petitioner and the respondent, with the result, by giving pressure and influence, the respondent family brought the petitioner and her family members before the Police where the respondent obtained the disputed cheque from the petitioner by way of giving coercion and threat through police. By taking all these defences, the petitioner, before the trial Court, had conducted the case.

12.However, the trial Court, after having considered all these aspects, though acquitted A1 and A3 but, convicted the petitioner, who was A2, for an imprisonment of six months and also ordered compensation equal to the cheque amount.

13.The said defences taken by the petitioner, before the trial Court, have once again been reiterated before the First Appellate Court also. The Appellate Court by giving its anxious consideration to such of those defences taken by the petitioner, has, in fact given answers to those defences and therefore, has confirmed the Judgement of the trial Court.

14.I have heard Mr.S.Elambharathi, learned counsel appearing for the petitioner and also I have heard the respondent, who is the party-in-person.

15.The learned counsel appearing for the petitioner has vehemently contended that the non issuance of statutory notice definitely would be a fatal to the complainant's case and without a statutory notice, no complaint can be maintained under Section 138 of the NI Act. In this regard, the learned counsel appearing for the petitioner has taken me to the copy of the notice issued by the complainant/respondent dated 21.11.2007. In the said notice, the respondent has stated that the cheque for Rs.9,25,000/- was given by all the three

accused and the same was deposited at the Bank on 13.07.2007, but, they had given "Stop payment". Since they have not shown any serious interest in repaying the amount they were asked to repay the amount along with the bank charges, within seven working days, from the date of receipt of the notice, otherwise, legal action would be initiated against them.

16. The learned counsel appearing for the petitioner has also drawn my attention to the postal acknowledgement card. On perusal, it reveals that on 22.11.2007, the said postal acknowledgement card was endorsed by one Elumalai for the said Kumar (A3). By citing the signature of the said Elumalai, the learned counsel would argue that, there was no separate notice issued to the petitioner, as the said notice was sent by the respondent to all the three persons including the petitioner herein and none of the three persons had received the notice and only a third person namely, Elumalai, had received it. Therefore, the learned counsel appearing for the petitioner would submit that the notice said to have been received by the respondent dated 21.11.2007 was received by

the third party by name Elumalai hence, it cannot be construed as a statutory notice within the meaning of Section 138 of the NI Act.

17. In this regard, the learned counsel appearing for the petitioner would submit that, since the demand by way of statutory notice is one of the necessary ingredients and in the absence of the same, the respondent cannot maintain a complaint under Section 138 of the NI Act. The learned counsel would further submit that though this defence was taken before the trial Court as well as the First Appellate Court, both Courts have failed to appreciate this and in spite of this defence, which according to the learned counsel for the petitioner, is a fatal to the very complaint given by the respondent, both the Courts have failed to consider this defence.

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18. The learned counsel appearing for the petitioner, except these legal submissions, had not raised any other point or any legal submissions for the consideration of this Court.

19.Per contra, Mrs.B.Ramya, the respondent, who appeared party-in-person, has submitted that by taking advantage of the family friendship between her father and the 1st accused, who is the husband of the 2nd accused and the father of the 3rd accused, had approached her for an arrangement of hand loan of Rs.10 lakhs. When the respondent contacted the petitioner and her husband, they had also endorsed the desire of the 3rd accused, who is the son of the petitioner and the 1st accused and also they assured that once the hand loan is given by the respondent, the same would be returned back to her within a short period.

20.It was further submitted by the respondent that, believing their words, as they have been family friends of her father and her family for a longer time, the respondent claimed that she mobilized the funds and had given Rs.10 lakhs by way of cash to all the three persons i.e., A1 to A3.

21.She further contended that, since the said amount was not repaid within a time as they assured, the respondent

made several demands and pursuant to which, the cheque was issued by the petitioner, who is the 2nd accused, in her name, on 05.11.2007. When the said cheque was presented, it was returned as "the drawer Stopped payment". Therefore, the respondent submitted that, knowing fully well the cheque had been given to the respondent, the petitioner has given a Stop Payment, in order to cheat or defeat the lawful claim of the respondent, who is entitled to get back her money, which is the hand loan for the timely help to tide over the petitioner's family to meet out the medical expenses.

22.The respondent would also state that since the cheque was returned, notice had been given by her. All the three persons had come to the respondent and received the money and both A1 and A2, the petitioner and her husband stood as guarantors for A3 i.e., the son of A1 and A2. The said cheque was though issued in the name of A2, i.e., the petitioner herein, all the three persons had committed the breach by issuance of cheque and by giving stop payment and therefore, notice was issued by the respondent to all the three persons, not separately but, only by a single notice. The said

notice was received none other than the staff/assistant of the petitioner and therefore, the notice sent statutorily has been received by the accused including the petitioner.

23. Therefore, the respondent would state that there is no violation of the procedure to be followed as per the provision of Section 138 of the NI Act and the statutory notice had been issued and served on the accused persons properly. Therefore, it was submitted by the respondent that the said defence taken by the petitioner cannot be treated as a valid defence. The respondent would also state that once the execution of the cheque as well as the signature on the cheque is admitted by the accused persons, the presumption under the Negotiable Instruments Act, would go in favour of the complainant i.e., the respondent herein and therefore, since they have failed to honour the cheque and to repay the amount, in spite of the statutory notice having been given to them, all the three accused persons are liable to be punished. However, the trial Court, because of the cheque was issued in the name of the 2nd accused, had acquitted A1 and A3 and convicted A2 only i.e., the petitioner herein. In this regard,

the respondent would also submit that the Judgment though was appealed by the petitioner, the First Appellate Court also confirmed the Judgment of the trial Court and therefore, absolutely there is no ground to interfere with the said Judgments made concurrently and hence, she prays that this Revision has to be dismissed.

24.I have considered the rival submissions made by the learned counsel for the petitioner as well as the respondent, who appeared party-in-person.

25.The main issue is that there was no statutory notice within the meaning of Section 138 of the NI Act. The defence taken by the learned counsel for the petitioner is that no notice individually has been sent to each of the accused persons including the petitioner. Secondly, he has taken a defence that there is no proof that the said notice dated 21.11.2007, issued by the respondent, has been served on the petitioner or the other two accused persons, who have been acquitted by the Courts below.

26. In this regard, on perusal of the notice as well as the postal acknowledgement card, one can easily find that the notice was addressed to all the three accused by specifically giving their names as Mr. Ramanathan, Mrs. Sujatha and R. Kumar to the address viz., New No.15, Old No.6, Nageswara Road, Nungambakkam, Chennai-34. The postal acknowledgement card further reveals that the notice was received by one Elumalai for the said Kumar. During the arguments, when it was asked by this Court to the learned counsel for the petitioner that who is that Elumalai, and it was replied by him that, Elumalai was the Security Guard at the petitioner's house. It is quite usual that, whenever letters or postal articles are delivered, if the security person is available in the house premises, certainly, that would be delivered to the security persons and who would be giving the said letters/notices to the Owner/Employer/Occupier of the house/premises. Therefore, these factors would reveal that the statutory notice had been sent by the respondent to the accused persons including the petitioner. Therefore, it cannot be said that no statutory notice was issued by the respondent to the petitioner.

27. Insofar as the said plea raised by the petitioner that notice has not been served properly to the petitioner and since the same has not been served on the petitioner, which is one of the important ingredients under Section 138 of the Negotiable Instruments Act, the complaint as well as the entire proceedings initiated by the respondent under Section 138 of the NI Act is vitiated is concerned, the law in this regard is well settled. In this regard, this Court would like to rely upon a Judgment on this point, in **2007 (6) SCC 555** in the matter of **C.C. Alavi Haji vs Palapetty Muhammed & Another**. In the said Judgment, the Hon'ble Apex Court, by taking recourse to Section 27 of the General Clauses Act, 1897, has held as follows:

"8. Since in Bhaskarans case (supra), the notice issued in terms of Clause (b) had been returned unclaimed and not as refused, the Court posed the question: Will there be any significant difference between the two so far as the presumption of service is concerned? It was observed that though **Section 138** of the Act does not

require that the notice should be given only by post, yet in a case where the sender has dispatched the notice by post with correct address written on it, the principle incorporated in [Section 27](#) of the General Clauses Act, 1897 (for short G.C. Act) could profitably be imported in such a case. It was held that in this situation service of notice is deemed to have been effected on the sendee unless he proves that it was not really served and that he was not responsible for such non-service.

9. All these aspects have been highlighted and reiterated by this Court recently in Vinod Shivappas case (supra). Elaborately dealing with the situation where the notice could not be served on the addressee for one or the other reason, such as his non availability at the time of delivery, or premises remaining locked on account of his having gone elsewhere etc; it was observed that if in each such case, the law is understood to mean that there has been no service of notice, it would completely defeat the very purpose of the Act. It would then be very easy for an unscrupulous and dishonest drawer of a cheque to make himself scarce for sometime after issuing the cheque so that the

requisite statutory notice can never be served upon him and consequently he can never be prosecuted. It was further observed that once the payee of the cheque issues notice to the drawer of the cheque, the cause of action to file a complaint arises on the expiry of the period prescribed for payment by the drawer of the cheque. If he does not file a complaint within one month of the date on which the cause of action arises under Clause (c) of the proviso to [Section 138](#) of the Act, his complaint gets barred by time. Thus, a person who can dodge the postman for about a month or two, or a person who can get a fake endorsement made regarding his non availability, can successfully avoid his prosecution because the payee is bound to issue notice to him within a period of 30 days from the date of receipt of information from the bank regarding the return of the cheque as unpaid. He is, therefore, bound to issue the notice, which may be returned with an endorsement that the addressee is not available on the given address. This Court held: 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 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. 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 correct and that the addressee, namely the drawer of the cheque, with knowledge of the notice had deliberately avoided to receive notice.....

10. It is, thus, trite to say that where the payee dispatches the notice by registered post with correct address of the drawer of the cheque, the principle incorporated in Section

27 of the G.C. Act would be attracted; the requirement of Clause (b) of proviso to [Section 138](#) of the Act stands complied with and cause of action to file a complaint arises on the expiry of the period prescribed in Clause (c) of the said proviso for payment by the drawer of the cheque. Nevertheless, it would be without prejudice to the right of the drawer to show that he had no knowledge that the notice was brought to his address.

....

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, [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.

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17. It is also to be borne in mind that the requirement of giving of notice is a clear departure from the rule of Criminal Law, where there is no stipulation of giving of a notice before filing a complaint. Any drawer who claims that he did not receive the notice sent by post, can, within 15 days of receipt of summons from the court in respect of the complaint under [Section 138](#) of the Act, make payment of the cheque amount and submit to the Court that he had made payment within 15 days of receipt of summons (by receiving a copy of complaint with the summons) and, therefore, the complaint is liable to be rejected. A person who does not pay within 15 days of receipt of the summons from the Court along with the copy of the complaint under [Section 138](#) of the Act, cannot obviously contend that there was no proper service of notice as required under [Section 138](#), by ignoring statutory presumption to the contrary under Section 27 of the G.C. Act and [Section 114](#) of the Evidence Act. In our view, any other interpretation of the proviso would defeat the very object of the legislation. As observed in Bhaskarans case

(supra), if the giving of notice in the context of Clause (b) of the proviso was the same as the receipt of notice a trickster cheque drawer would get the premium to avoid receiving the notice by adopting different strategies and escape from legal consequences of [Section 138](#) of the Act".

28. The said Judgment in fact has been reiterated and amplified by the Judgment of the Hon'ble Supreme Court reported in **2014 (12) SCC 685**, in the matter of **M/s. Ajeet Seeds Ltd. v. K. Gopala Krishnaiah**, wherein the Hon'ble Apex Court has held as follows:

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[3], this Court did not take 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 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.

"Whether in absence of any averments in the complaint to the effect that the accused had a role to play in the matter of non-receipt of legal notice; or that the accused deliberately avoided service of notice, the same could have been entertained keeping in view the decision of this Court in Vinod Shivappa's case?"

7. Dealing with the above question, this Court referred to *K. Bhaskaran v. Sankaran Vaidhyan Balan*[4], 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....

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 of notice under [Section 138](#) of the NI Act.

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 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. 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 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, 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."

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

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.

11...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."

29.If the aforesaid principle, as has been settled by the Hon'ble Apex Court in the afore cited two Judgments, is applied to the facts of the present case, the very plea raised by the petitioner, which in fact is the only legal plea raised before this Court by the petitioner through his counsel, can outrightly be rejected. In fact, in the said cases cited above, the Hon'ble Apex Court has dealt with the matters with the fact that the complainant did not contend whether the notice had been served on the drawer of the cheque. Even in the absence of such averment in the complaint, the Hon'ble Apex Court has held that, the complaint is entertainable and the alleged offence is triable. Here, in the case in hand, in fact, notice has been served and the personal staff of the petitioner has received the same and acknowledged and the said copy of the notice as well as the postal acknowledgement card had also

been marked as Ex.P.4 and Ex.P.5. before the trial Court. Therefore, the facts of the present case is far better than the case as referred to in the two cases cited above. Therefore, the principle laid down by the Hon'ble Apex Court, in this regard, especially, in the context of Section 27 of the General Clauses Act, would squarely applicable to the present case also and in fact, the present case is in still better footing than those two cases. When the principle enunciated in those Judgments since can be relied upon, the petitioner cannot raise the plea of non-service of notice and therefore, the said plea is liable to be rejected.

30. Apart from the said legal submission, no other ground was urged by the learned counsel for the petitioner. However, in order to consider the Judgments of the Courts below, in this Revision, this Court wants to go into the merits of the case, projected by the complainant and defended by the accused person.

31. It is a fact that the cheque was issued only in the name of the petitioner. The petitioner has not denied the

execution of the cheque as well as the signature and it has been admitted that the cheque was issued only from the account of the petitioner and the signature available in the cheque also is of the petitioner.

32. Even though an alternative theory was attempted to be projected by the accused persons including the petitioner to state that, the cheque was obtained by the respondent by threat and coercion in the presence of the Police, absolutely no evidence to that effect, had been produced before the trial Court. In fact, the said point has not been canvassed before this Court, during the Revision, by the learned counsel for the petitioner.

33. The learned counsel appearing for the petitioner has relied upon the following Judgments in order to support the case of the petitioner.

(1) 2006 (3) CTC 730

M.S.Narayana Menon @ Mani vs. State of Kerala and another

(2)(2008) 4 Supreme Court Cases 54

Krishna Janardhan Bhat vs. Dattatraya G. Hegde

(3)(2008) 1 MLJ (Crl) 1431 (SC)

Sarav Investment and Financial Consultants Pvt. Ltd. vs. Llyods Register of Shipping Indian Office Staff Provident Fund

(4)(2015) 2 MLJ (Crl) 708 (SC)

Krishna Texport and Capital Markets Limited v. ILAA Agrawal and others

34. In the Judgment in **2006 (3) CTC 730** cited supra, the principle enunciated by the Apex Court is that a presumption is a legal or factual presumption drawn from existence of certain facts.

35. In the Judgment in **(2008) 4 Supreme Court Cases 54** cited supra, it was held that Section 139 of the NI Act merely raises a presumption in favour of the holder of a cheque that the said cheque has been issued by the accused for discharge of any debt or other liability. It was also held

that existence of legally recoverable debt is not a matter of presumption under Section 139.

36. In the Judgment in **(2008) 1 MLJ (CrI) 1431 (SC)** cited supra, the principle was that the communication of notice under Section 138 of the NI Act is imperative in character and it is a part of cause of action for lodging the complaint. Therefore, without notice, or notice alleged to have been served by hand delivery cannot be presumed as sufficient notice in terms of the statute. It was also held that it makes a demand or communication of the demand within 15 days, because service of notice is part of cause of action for lodging the complaint.

37. In the Judgment in **(2015) 2 MLJ (CrI) 708 (SC)** cited supra, it was held at Para 13 of the Judgment that, no other person is contemplated by Section 138 as being entitled to be issued such notice. There is nothing in Section 138 which may even remotely suggest issuance of notice to anyone other than the drawer.

38. There can be no quarrel on these broad principles that have been enunciated in the Judgments cited supra.

39. Here, in the case in hand, admittedly, there was a notice on 21.11.2007 and the said notice was received by the responsible sub-staff or assistant of the petitioner's house/family on 22.11.2007. Therefore, absolutely there is no ground to show that there was no notice statutorily issued by the respondent and as such, notice was not served on the accused persons including the petitioner.

40. In fact, this defence vehemently raised by the petitioner's side, has been considered by the First Appellate Court, at Para 9 of the Judgment, which is impugned hereunder:

"9. On considering both sides submissions and the appeal grounds and the lower Court records, it has been found there is some discrepancies in the cross examination of PW1. But, it will not be affected the case of the complainant in the lower Court. The main contention raised by

the appellant herein the statutory legal notice was not issued by the complainant. Hence, C.C.No.10816 of 2008 is not at all maintainable. But, on perusal of the documents marked through PW1 in the lower Court, the notice sent by the complainant to the accused dated 21.11.2007 has been marked as Ex.P.4 and the same was received by the accused and the postal acknowledgement card was marked as Ex.P.5. But, no reply notice was sent to the Ex.P.4 till today. Further, Section 138 of NI Act speaks about before filing the complaint, the complainant should send a notice within a stipulated period only. It is not mentioned as legal notice or lawyer notice. Hence, the complainant sent a notice to the accused on 21.11.2007 and it has been marked as Ex.P.4 in the Lower Court. Hence, the defence taken by the accused in the appeal not sustained in this score."

41.The learned Judge having considered this defence and by taking note of the fact that the notice sent by the complainant to the accused dated 21.11.2011 was marked as

<http://www.judis.nic.in> Ex.P.4 and the postal acknowledgement was marked as Ex.P.5,

has come to a conclusion that the said notice dated 21.11.2007 i.e., Ex.P.4 is a valid statutory notice and since the same has been received by the petitioner or on her behalf through the acknowledgement card which was marked as Ex.P.5, and therefore, has rightly rejected the contentions on behalf of the petitioner before the First Appellate Court.

42. In the matter of cheque dishonoured cases under Section 138 of the NI Act, the law has marched well and in fact, it has been settled. The presumption under Section 139 of the Act, is always in favour of the complainant. Though it is a rebuttable presumption, the rebuttal has to come from the accused side, and the same must be an acceptable rebuttal. These issues since have been widely discussed and settled by the Hon'ble Apex Court in Rangappa's Case reported in (2010) 11 Supreme Court Cases 441 (Rangappa v. Sri Mohan). Thus, it has been once again canvassed against the petitioner. In this regard, Para 26 of the said Judgment is extracted hereunder:

“In light of these extracts, we are in agreement with the respondent claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a

legally enforceable debt or liability. To that extent, the impugned observations in *Krishna Janardhan Bhat* may not be correct. However, this does not in any way cast doubt on the correctness of the decision in that case since it was based on the specific facts and circumstances therein. As noted in the citations, this is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant."

43.If the said principle of the aforesaid Judgment is applied to the present case, it can be safely concluded that the petitioner/accused did not bring any rebuttable presumption as the presumption has already been in favour of the complainant and against the accused within the meaning of Section 138/139 of the NI Act. Therefore, this Court finds that there is no ground to interfere with the order of the trial Court, as has been confirmed by the order of the First Appellate Court.

44.Insofar as the quantum of sentence is concerned, the Court below has sentenced the accused to undergo Simple Imprisonment for six months and had directed the petitioner/accused to pay the cheque amount as compensation in terms of Section 255(2) of the Code of Criminal Procedure. The petitioner is a woman, considering the said factor, though the Court is empowered to punish the accused under Section 138 of the NI Act, to an extent of two years maximum punishment, this Court is of the view that the punishment given by the Trial Court as confirmed by the First Appellate Court, can be modified to the extent that the petitioner/accused is convicted and sentenced to undergo Simple Imprisonment for a period of three months.

45.Insofar as the quantum of compensation is concerned, since the loan amount was Rs.10 lakhs and as a part payment, the cheque was issued by the petitioner for a sum of Rs.9,25,000/- only, this Court feels that the said

compensation, equal to the cheque amount is not on the higher side and therefore, such compensation does not warrant any interference.

For all these reasons, this Criminal Revision Case fails and accordingly, the same is dismissed with the aforesaid modification regarding the imprisonment. The trial Court is directed to take steps to secure the petitioner/accused to undergo the punishment awarded against her. Consequently, connected Miscellaneous Petitions are closed.

07.08.2017

Internet : Yes
Index : yes/No

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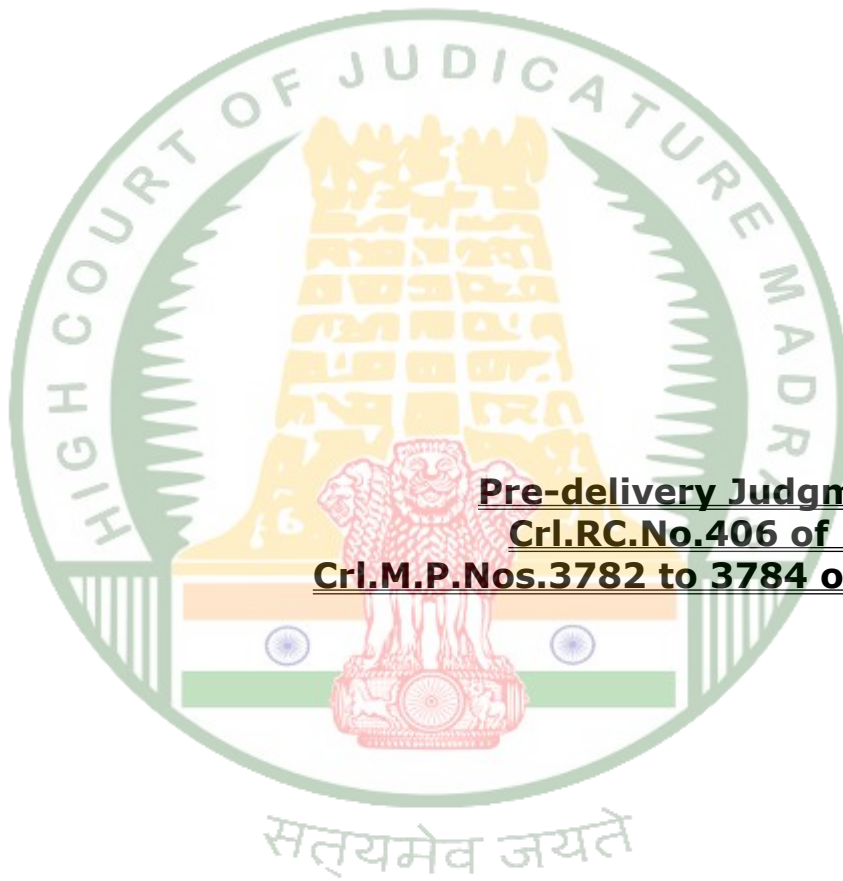
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1.The XVIII Additional District and Sessions Judge,
Chennai.

2.The Metropolitan Magistrate,
Fast Track Court No.III,
Saidapet, Chennai.

R. SURESH KUMAR, J,

mps



Pre-delivery Judgment in
CrI.RC.No.406 of 2017&
CrI.M.P.Nos.3782 to 3784 of 2017

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07.08.2017