

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

CRIMINAL REVISION CASE No.133 of 2014

ORDER:

Heard Sri B. Naganjaneyulu, learned counsel on behalf of Sri K. Ramakoteswara Rao, learned counsel for the petitioner - complainant, and Sri Ch. Rama Krishna, learned counsel for respondent No.1 – accused.

The entire controversy in the present case revolves around the question whether the mandatory requirement of service of notice envisaged by the provisions of Section 138 of the Negotiable Instruments Act (for short, 'the Act') was effected or not?

The trial court, of course, in its judgment dated 11.07.2011, in Calender Case No.99 of 2008, without deliberating much on the controversy, held that the complainant proved the offence punishable under Section 138 of the Act and recorded conviction under Section 255 (2) of the Code of Criminal Procedure, 1973 (for short, 'the Code') and inflicted the sentence of Simple Imprisonment for a period of one month and also ordered the accused to pay a sum of Rs.30,000/- to the complainant towards compensation under Section 357 (3) of the Code with default sentence of Simple Imprisonment for a period of 15 days as per Section 357 read with Sections 421 and 431 of the Code.

When the accused preferred Criminal Appeal No.253 of 2011 on the file of the XI Additional District and Sessions Judge (F.T.C),

Guntur at Tenali, the learned appellate Judge noted the findings recorded by the trial Court and made certain observations in paragraphs '31' to '33' basing on the ruling of the Delhi High Court in **Gopal Mishra v. The State & another**¹ and also other decisions referred to in various paragraphs upto paragraph '29' and held that the complainant, who was examined as PW.1, failed in examining postal employee to prove that there was actual service of Ex.P7 – notice, as Ex.P6 only shows that the notice was dispatched through postal authorities, and the presumption of deemed service taking aid of the provisions of Section 27 of General Clauses Act would not arise and that, thereby, set aside the conviction and the sentence of imprisonment inflicted on the accused and so also the compensation awarded.

Learned counsel for the revision petitioner would submit that when the accused has not opposed as to service of notice on him under Section 138 of the Act, the learned appellate Judge was not right in reversing the conviction recorded and sentence of imprisonment inflicted, besides the order of payment of compensation of Rs.30,000/-.

Relying on a catena of decisions of the Honourable Supreme Court and various High Courts and applying the legal principles laid down therein, the lower appellate court has arrived at a finding that there was no service as contemplated by the provisions of Section 138

¹ 167 (2010) DLT 387

of the Act and the mandatory requirement of Section 138 of the Act was not satisfied, which cannot be faulted. Taking note of the failure on the part of the complainant to comply the mandatory requirement of service of notice, as envisaged by the provisions of Section 138 of the Act, by the appellate court, cannot be commented. The Court has to necessarily or is under obligation to look into whether the requirements mandated by the statute have been complied or otherwise, as it is a case where the sentence of imprisonment was inflicted and also there is a direction to pay compensation.

In **M/s. Madan and Co. v. Wazir Jaivir Chand**², relied on by learned counsel for the revision petitioner, it was held that notice to terminate tenancy sent through registered post on correct address is valid. The said decision of the Honourable Supreme Court was in the context of Sections 11 and 12 of Jammu and Kashmir Houses and Shops Rent Control Act (34 of 1966). However, learned counsel for the revision petitioner is unable to quote authority of the Honourable Supreme Court having direct bearing on the controversy occurring in the present case. Therefore, ruling in **M/s. Madan and Co.** (2 supra) would not render any assistance to the revision petitioner in getting over the finding recorded by the lower appellate court, which goes to the root of the case of the revision petitioner – complainant. Therefore, there is no legal infirmity in the order passed by the lower appellate court warranting interference.

² AIR 1989 Supreme Court 630

Hence, the present Criminal Revision Case is dismissed.

Miscellaneous applications, if any pending in the present revision case, stand closed.

JUSTICE A.SHANKAR NARAYANA

08.11.2017

v v

