

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 24th April, 2019

Judgment delivered on: 01st July, 2019

+ CRL.REV.P. 438/2017

R L VARMA & SONS (HUF)

..... Petitioner

versus

P C SHARMA

.....Respondent

Advocates who appeared in this case:

For the Petitioners : Petitioner No.1 in person.

For the Respondent : Mr.T.A.Francis and Mr.Mahesh Katyayan, Advs.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

1. Petitioner impugns judgment dated 31.05.2017 whereby the Appellate Court has dismissed the appeal of the petitioner impugning order on conviction dated 10.03.2017 and order on sentence dated 20.03.2017 convicting the petitioner of an offence under Section 138 of the Negotiable Instruments Act.

2. Petitioner who appears in person inter-alia contends that from the record it is clear that the statutory notice under Section 138 of the Negotiable Instruments Act was neither addressed to the correct address nor served to the petitioner.

3. It is submitted that the complainant had relied on an alleged acknowledgement of debt as on 31.03.2009 by an undated letter which was exhibited as Exh.CW1/2. It is submitted that in the said acknowledgement it was clearly mentioned that the correspondence address was A-123, Friends Colony (East), New Delhi.

4. He submits that the statutory notice exhibit CW-1/5 was not addressed to the correspondence address mentioned in the said alleged acknowledgement (Exh.CW1/2) but was sent to Dr. Gopal Das Building, 28, Barakhamba Road, New Delhi. He submits that the said building was a building promoted by the family of the petitioner, however, as on the date of the statutory notice there was no space occupied by the petitioners in the said building.

5. He further submits that the notices which were sent through registered post were delivered back unserved and this was acknowledged by the complainant and the returned envelope was exhibited as exhibit CW-1/8 which had an endorsement "Left".

6. Further complainant had filed an affidavit stating that he had visited Dr. Gopal Das Building, 28, Barakhamba Road, New Delhi, however, in his affidavit has not stated as to which portion of the building was occupied by the petitioner.

7. He submits that the building is being used as an office complex and comprises of approximately 16 floors occupied by several scores of occupants unrelated to the petitioner.

8. Petitioner further submits that in his cross examination the complainant has categorically admitted that he had never met the petitioner or corresponded with the petitioner at the Barakhamba Road address. Further it is contended that in the complaint filed by the complainant the correspondence address mentioned in the alleged acknowledgement has been mentioned as the second address of the petitioner and the petitioner was served with the summons only at the second address.

9. He further submits that the Trial Court erred in placing reliance on the judgment of the Supreme Court in *C.C. Alavi Haji vs Palapetty Muhammed & Anr.*, AIR 2007 SC (Suppl) 705. He submits that the said judgment would apply only in the case notice was correctly addressed. Admittedly in the present case notice was sent to an incorrect address at which the petitioner was not present.

10. He relies on the judgment in *M/s. Ajeet Seeds Ltd. v. K. Gopala Krishnaiah*, (2014) 12 SCC 685 wherein it has been held that presumption of service of notice would arise only in case the notice is correctly addressed.

11. Subject complaint was filed under Section 138 of the Negotiable Instruments Act contending that the cheque issued in the sum of Rs. 10 lacs had been dishonoured on account of 'insufficient funds'. The only issue raised by the petitioner in the subject proceedings is that statutory legal notice under Section 138 of the

Negotiable Instruments Act was neither served upon nor tendered to the petitioner and the statutory presumption could not arise in the present case as the notice was not correctly addressed.

12. The statutory legal notice is addressed to the petitioner as follows:-

*“R.L. Verma & Sons (HUF)
Through its authorized signatory
Mr. Dhruv Verma
Dr. Gopal Dass Building
28 Barakhamba Road
New Delhi – 110065”*

13. Subject complaint has been filed stating the address of the petitioner as under:

*1. R.L. Verma & Sons (HUF)
Through its authorized signatory
Mr. Dhruv Verma
Dr. Gopal Dass Building
28 Barakhamba Road
New Delhi - 110001*

*2. Also at :-
A-123, New Friends Colony (East)
New Delhi – 110065.*

14. It is an admitted position that the summons were served on the petitioner only at the second address mentioned in the complaint i.e. at A-123, New Friends Colony, New Delhi.

15. Along with the complaint, the complainant had relied on a certificate allegedly issued by the petitioner confirming a credit balance of Rs.14,31,250/- as on 31st March 2009 which was marked as Ex. CW1/2.

16. Perusal of the said certificate shows that the letterhead at the top states as under:

R.L. Verma & Sons (HUF)
Dr. Gopal Dass Building
28 Barakhamba Road
New Delhi – 110001

17. However, the bottom of the letterhead mentions the correspondence address as:-

A-123, New Friends Colony (East)
New Delhi – 110065.

18. Along with the complaint, complainant had also annexed the return envelope of the statutory notice as Ex. CW1/8. In support of the complaint, the complainant has filed an affidavit with the trial court dated 04.07.2011 marked as Ex. CW1/B, wherein the complainant had stated that he had personally visited Dr. Gopal Dass Building, 28 Barakhamba Road after dispatch of the legal notice where office of the accused is situated.

19. It is stated that the accused namely, Dhruv Verma is the promoter/owner of the said building. Further, the complainant had deposed that the security guard in the building informed the

complainant that the accused/owner of the building Mr Dhruv Verma did not keep any fixed time nor did he come regularly in the office.

20. It is an admitted position that the building at 28 Barakhamba Road is a multi-storeyed complex, having several floors and several occupants on each floor. It is also not the case of the complainant that the petitioner has a regular office in the said premises. Even in his cross-examination, the respondent/complainant had categorically stated that he had not met the accused at the address mentioned in the legal notice nor had he corresponded with him at the said address.

21. Perusal of the record clearly shows that the complainant even in the complaint had stated that the statutory notice was not delivered and had accordingly annexed with the complaint the returned envelope containing the statutory notice.

22. Legal presumption of service of notice can only arise in case the notice is correctly addressed. If the notice is incorrectly addressed no legal presumption can arise. In the present case, the complainant had annexed the letterhead of the petitioner containing the address mentioned in the statutory notice but specifically mentioning there in the correspondence address as that of New Friends Colony.

23. It is not the case of the complainant that the petitioner was having an office or was ever found at Barakhamba Road, the address mentioned in the statutory notice.

24. Section 138 of the Negotiable Instruments Act mandates the issuance of the statutory notice as a pre-condition to filing of a complaint. The cause of action to file a complaint under section 138 of the Negotiable Instruments Act arises only on issuance and service of statutory notice and failure of the accused to comply with the statutory notice. In the absence of service of statutory notice the cause of action would not accrue. Service of statutory notice would also include legal presumption of service if circumstances so warrant.

25. As noted above, in the present case there was admittedly no service of statutory notice and the presumption of service of the statutory notice also does not arise in the facts of the present case as the notice was not correctly addressed.

26. Both the trial court as well as the appellate court have rejected the contention of the petitioner solely on the ground that the ancestral house of the petitioner was situated at the said address i.e. 28 Barakhamba Road New Delhi and there was nothing on record to show that he had no connection with the said premises.

27. The courts further were of the view that the petitioner has not specifically denied the receipt of the notice. The trial court has further held that the complainant had nothing to gain by sending a legal notice containing incomplete address. The appellate court has noticed that the petitioner has admitted that the said property was an ancestral house which was vacated in the year 1990 when a commercial multi-

storeyed building was built. The appellate court has held that the petitioner has failed to take a plea that he had no interest or right left in any part of the property when the legal notice was sent.

28. Referring to the affidavit of the complainant Ex. CW-1/B noticed above, the appellate court has held that the fact the appellant was promoter/owner of the building and the security guard had informed the complainant that the petitioner did not visit the building at fixed time nor he was regular in his office meant that he did visit this property and his office at least occasionally and as such inference was drawn that office of the appellant was working there and it was a difficult task for the postman to find his office and deliver a letter addressed to him.

29. Both the Courts clearly erred in raising such a legal presumption. The admitted case is that post 1991, a commercial complex had been built at 28 Barakhamba Road housing scores of offices. It is an admitted position that there was several floors and several offices of third parties. There is nothing on record to suggest that petitioner had any office in the said property.

30. A security guard posted at the building which houses several offices would not satisfy the condition of being an agent empowered to receive notices on behalf of the occupants of the building. Further the complainant had not placed on record any material to suggest that on the date when the notice was sent, the petitioner was in possession

of an office or visited any office in the said building.

31. The affidavit of the petitioner had clearly been misconstrued by the appellate court. The Security guard, whom the complainant is alleged to have met, had stated that the petitioner did not visit place at fixed time nor was he regular in his office. This when considered in the backdrop of the fact that there is no office or floor mentioned on which the petitioner had his office and further the fact that the registered envelope had been returned undelivered, the inference has incorrectly been drawn by the courts that the notice was duly served on the petitioner.

32. Another factor which may be kept in mind is that the complaint which is filed by the complainant within a month of the dispatch of the statutory notice also contains the second address which was mentioned as the correspondence address in the letter of acknowledgement Ex. CW-1/2 relied on by the complainant.

33. The complainant was clearly aware of the correspondence address of the petitioner and did not mention the same in the statutory notice, nor is his statutory notice addressed to the said correspondence address.

34. Since the pre-condition of filing a complaint under section 138 of the Negotiable Instruments Act of sending a statutory notice has not been satisfied in the present case, no cause of action arose in favour of the complainant to file the subject complaint. Since no cause

of action arose, the petitioner could not have instituted the complaint nor could the trial court as well as the appellate court by the impugned order have convicted the petitioner.

35. In view of the above, the impugned judgment on conviction dated 10.03.2017 and the order on sentence dated 20.03.2017 convicting the petitioner and the judgement dated 31.05.2017 dismissing the appeal of the petitioner are not sustainable and accordingly are quashed.

36. The petition is consequently allowed and the complaint filed by the respondent under Section 138 of the Negotiable Instruments Act is dismissed.

37. The petition is disposed of in the above terms.

38. Order *Dasti* under signatures of Court Master.

SANJEEV SACHDEVA, J

JULY 01, 2019

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