

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1170 OF 2022

Babasaheb Yashwant Kamble
Age : 37 years, Occu.: Service.
R/o. Gangasagar Society,
Near D Mart, Ring Road, Latur,
Dist. Latur.

...Petitioner**Versus**

Yashpal Mukund Bhagwat,
Age : 34 years, Occu.: Business,
R/o. Sugaon, Tq. Ambajogai,
Dist. Beed.

...Respondent

...

Advocate for Petitioner : Mr. Adgaonkar Ravibhushan P
Advocate for Respondent : Mr. Dhanure Bramhanand M.

...

CORAM : KISHORE C. SANT, J.
DATE : 5th APRIL 2023.

ORDER :

1. Heard the learned Advocates for the respective parties at length.

By consent of the parties, taken up for final disposal.

2. The petitioner/accused has approached this Court challenging an

order dated 14.07.2022 passed by the learned Additional Sessions Judge, Ambajogai in Criminal Revision No.8/2021. It is the preliminary defence of the accused that there is no legally enforceable liability or debt, so as to attract the Prosecution under Section 138 of the Negotiable Instruments Act. The second objection is that the notice is not served upon him. So far as first ground is concerned, this is too pre-matured stage to go into the aspect as to legally enforceable liability. So far as second ground is concerned about service of notice, the learned Advocate for the petitioner points out from the averment in the complaint in paragraph no.18, wherein the averment in respect of the notice is that when the postman went to serve the notice on the accused, it was informed that the accused was out of station with the endorsement as stated, the envelope containing notice was sent back to the accused.

. Learned Advocate submits that service of notice for demand is a pre-requisite and unless there is a specific averment in the complaint to that effect, the complaint need not be entertained.

3. The learned Advocate for the respondent submits that it is duty of

the complainant only to send a notice by registered post on the address of the accused person. He further submits that this is pre-matured stage to decide as to whether this amounts to service or not? He further invites attention to Section 94 of the N.I. Act, which reads as below.

Section 94 :

“Mode in which notice may be given.—Notice of dishonour may be given to a duly authorized agent of the person to whom it is required to be given, or, where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee; may be oral or written; may, if written, be sent by post; and may be in any form; but it must inform the party to whom it is given, either in express terms or by reasonable intendment that the instrument has been dishonoured, and in what way, and that he will be held liable thereon; and it must be given within a reasonable time after dishonour, at the place of business or (in case such party has no place of business) at the residence of the party for whom it is intended. If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid.”

. Thus in view of Section 94, he submits that it is only a duty of the complainant to direct to give notice and sent it by post. If there is any miscarriage, it does not render the notice invalid.

4. Considering the above position, this Court finds that at this stage

to go into the aspect of service is not expected. The complainant needs to get an opportunity to prove his case in the trial Court. This Court therefore finds that no case is made out to call for interference with the impugned order. Hence the following order.

ORDER

- (i) The Writ Petition stands dismissed and is accordingly disposed off.

[KISHORE C. SANT, J.]

Najeeb.