

*Esha***IN THE HIGH COURT OF BOMBAY AT GOA****CRIMINAL APPEAL NO. 55 OF 2014**

Mr. Pierre Antonio Lobo, 54 years of age,
son of Domnic L.B. Lobo, major,
businessman, Resident of Flat No. 4,
Rahul Apts., Alto Porvorim, Bardez, Goa.

Presently residing at Periwinkle Villa,
Chogm Road, Behind Wireless Building,
Alto Pilerne, Porvorim, Bardez, Goa.

... APPELLANT

VERSUS

1. Mr. Jose Remedios A.A. Rodrigues,
45 years, businessman, resident of
B-4, Riveira Residency, PDA Plots,
Alto Provorim, Bardez, Goa.

2. The State of Goa, through the Public
Prosecutor, High Court of Bombay
at Goa, Altinho, Panaji-Goa.

... RESPONDENTS

**WITH
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Mr. Dhaval Zaveri with Mr. Harshal Dessai, Advocates for the Appellant.

Mr. Arjun F. Naik with Ms. Kavita Naik, Advocates for Respondent No. 1.

Mr. Gaurish Nagvenker, Additional Public Prosecutor for Respondent No. 2.

CORAM: **BHARATI DANGRE, J.**

RESERVED ON: **11th JULY 2025**

PRONOUNCED ON: **26th SEPTEMBER 2025**

JUDGMENT:

1. These two Appeals arise out of two judgments delivered by Additional Sessions Judge, Mapusa in Criminal Appeal No. 68 of 2012 and Criminal Appeal No. 80 of 2010, which has reversed the judgments passed by the Judicial Magistrate First Class in the two distinct criminal cases, which had convicted the Accused for the offence punishable under Section 138 of Negotiable Instrument Act, 1881 (N.I. Act) and sentenced him to undergo imprisonment and also to pay a distinct amount of compensation under Section 357(3) of the Code of Criminal Procedure.

Upon the Appeal being preferred by the Accused, the Additional Sessions Judge, Mapusa, reversed the findings rendered by the Magistrate by holding that the Complainant had failed to prove that the cheques issued by the Accused were towards legally enforceable debt, and also on the ground that the JMFC had erred in holding that the legal notice of dishonour of cheque was received by the Accused.

2. I have heard Advocate Dhaval Zaveri along with Advocate Harshal Dessai for the Appellant in both the Appeals, whereas Respondent No. 1 in both the Appeals is represented by Advocate Arjun Naik along with Advocate Kavita Naik.

The State of Goa is represented by the Additional Public Prosecutor, Mr. Gaurish Nagvenker.

3. In order to appreciate the arguments advanced before me, I must refer to the background facts.

The parties to the proceedings are one, Mr. Pierre Antonio Lobo, the Complainant/the present Appellant, and Mr. Jose Remedios, A.A. Rodrigues, the Accused is the Respondent No. 1.

By an Agreement for Management dated 18.06.2008, Pierre Antonio Lobo, [hereinafter referred to as 'Lobo'], allowed the Accused Jose Remedios Rodrigues [hereinafter referred to as 'Jose'] to manage his Restaurant styled as "Don Hill Beach Resort", situated at Candolim, Bardez, Goa, initially, for a period of 12 months, from 01.11.2008 to 31.10.2009.

Mr. Lobo being the exclusive owner in possession of the property, being run as a Resort and registered with the Department of Tourism with a Bar and Restaurant situated on the ground floor, along with excise license to serve liquor, was handed over to the Manager Management Control on a monthly

compensation of Rs.2,08,333.33, which was agreed to be paid on the first day of every month. As a part of the agreement, Jose, who was appointed as Manager, handed over post-dated cheques for the entire period of 12 months after deduction of tax at source.

In addition to the above compensation, it was agreed that the Manager shall be liable to pay an annual fee of Rs.5 lakhs for using the plant and machinery and other fixtures, and the amount to be paid by him to the owner, for each term of 12 months, the management being in control of the said premises.

4. According to the Complainant, Lobo, the Accused defaulted in making the payment, as on all occasions when the cheques were deposited, they were dishonoured for insufficient funds, and the payment which was due was made by him subsequently in parts, after a prolonged period.

On account of the relationship shared, the Accused, Jose, sought a personal loan from Lobo in two different sums, and on 25.02.2009, a personal loan of Rs.4 lakhs was sought so as to enable him to pay his creditors and also to clear the outstanding bills with an assurance that the same shall be repaid to the Complainant along with interest. The Accused also issued a post-dated cheque in the sum of Rs.4 lakhs drawn on Canara Bank, Candolim Branch on 16.03.2009 for repayment of the said

amount, with a request not to deposit the said cheque till the end of June 2009.

Another loan in the sum of Rs.8 lakhs was requested from the Complainant, and for its repayment, a post-dated cheque drawn on HDFC Bank Limited dated 28.04.20210 in the sum of Rs.8 lakhs was also handed over to the Complainant, with a similar request not to deposit the cheque till the end of June 2009.

There arose some differences between the Complainant and the Accused, resulting in termination of the agreement for management by notice dated 24.06.2009.

5. The Appellant deposited the cheque dated 16.03.2009 of Rs.4 lakhs, drawn on Canara Bank on 08.07.2009, whereas he deposited the cheque of Rs.8 lakhs drawn on HDFC Bank Limited on 29.07.2010.

Both the cheques could not be honoured and therefore, two demand notices were issued. In respect of the dishonour of cheque of Rs.4 lakhs, a demand notice was sent on 18.07.2009 to the Accused, asking him to make the payment within 15 days of the receipt of the notice and this notice, according to the Complainant, is received by the Accused on 29.07.2009, but since the Accused failed to make the payment under the cheque amount, he filed a complaint under Section 138 of the N.I. Act before the JMFC,

Mapusa, on 27.08.2009, which was numbered as Private Criminal Complaint No. 626/2009/B.

On the cheque of Rs.8 lakhs being dishonoured on ground of “funds insufficient”, another legal notice was addressed to the Accused on 03.08.2010, informing that the cheque dated 28.04.2010 issued by him was dishonoured and calling upon him to make the payment within a period of 15 days. However, since no payment was received, a complaint was instituted before JMFC, Mapusa through Private Criminal Complaint No. 785/2010/F on 13.09.2010.

6. On the distinct cases being registered before the JMFC, Mapusa, the substance of accusation was conveyed to the Accused, Mr. Lobo, which had a reference to the cheques issued by him and about the cheques being dishonoured, resulting into issuance of demand notices, which were alleged to be “served on him”, but since there was failure and neglect to either reply to the notices or pay the cheque amounts, he was accused of committing an offence under Section 138 of the Negotiable Instruments Act, 1881, within his cognizance, to which, the Accused pleaded not guilty.

In both the cases, the Complainant examined himself as PW-1 along with the Manager of the respective Banks being

examined as PW-2. In Criminal Case 785/2010/F, the Postman was examined as PW-4.

7. In both cases, the Magistrate determined the issue whether the Complainant had proved that the Accused had issued the cheques towards a legally enforceable debt, and also determined the point whether the Complainant had proved that the demand notice was issued and received by the Accused, and he had failed to make the payment despite receipt of the notice.

Referring to the presumption under Section 139 of the N.I. Act in respect of a legally enforceable debt in favour of the Complainant and holding that the burden of proving is on the Accused, it was held that this burden was not rebutted by the Accused as he did not step into the witness box as the standard of proof on him is based on preponderance of probability and it was open for him to bring on record certain facts which would create a doubt as he is not duty bound to prove the case beyond doubt.

8. On consideration of the evidence of the Complainant as well as the Manager of the Banks, the first point was answered by the Magistrate holding that the Accused had issued the cheque towards a legally enforceable debt to the Complainant, which the

Complainant has proved by examining himself as well as the Managers from the Bank.

As regards the point about the legal notice being sent and received, the Magistrate in Criminal Case No. 626/2009/B i.e. relating to the cheque amount of Rs.4 lakhs, a finding was rendered that the Accused received the legal notice on 29.07.2009, but he did not pay the amount under the cheque to the Complainant and the Complainant had proved the necessary ingredients of Section 138 of the N.I. Act, being drawing of cheque, presentation of the cheque to the bank, returning of the cheque unpaid by the drawing Bank, giving of notice in writing to the Drawer demanding the amount and failure of the Drawer to make the payment. Since it was held that each and every ingredient of the offence was proved by the Complainant, the Accused was sentenced for the offence punishable under Section 138 of the NIA Act.

9. As far as the judgment in Criminal Case No. 785/ 2010/F is concerned, involving the cheque in the sum of Rs.8 lakhs, the Postman, Mr. Rajan Sawal, was examined as PW-4, who had deposed that he had delivered the envelope at the residence of the concerned party and obtained the signature of the party who had

received the envelope on the A.D. card and exhibited the same at Exhibit-E.

In cross examination, he admitted that the envelope was handed over to a girl, aged 15, and the relationship between the Accused and the girl was not proved and therefore, despite these circumstances, by making reference to Section 27 of the General Clauses Act, 1897 the Magistrate held that the Complainant has discharged the duty of sending the legal notice to the correct address of the Accused under certificate of posting, and if the Accused claims that he has not received the legal notice, it is for him to prove the non-service, in order to rebut the presumption under Section 27 of the General Clauses Act, 1897 but since no evidence was led by the Accused to rebut the presumption, the point no. 2 was answered in the affirmative.

10. Upon two separate Appeals being filed being aggrieved by the conviction and sentence in two cases, by the Accused, Jose, in the form of Criminal Appeal No. 68/2012 and Criminal Appeal No. 80/2010, the same Judge, decided both the Appeals in his capacity as an Additional Sessions Judge, Mapusa, however, reversed the finding of the Magistrate in both cases and acquitted the Accused of the offence punishable under Section 138 of the N.I. Act, 1881.

While deciding the Appeals, the Appellate Court answered both the points argued on behalf of the Accused in the positive, namely; (a) Had the JMFC erred in holding that the Complainant had proved that the Accused had issued the cheque of Rs.8 lakhs towards the legally enforceable debt and (b) Had the learned JMFC erred in holding that the Complainant had proved that the demand notice was received by the Accused.

Both the points being answered in the affirmative and in favour of the Accused, the finding of conviction and the sentence imposed was set aside by recording that the JMFC has erred on both the points, as the Accused, by raising a reasonable and probable defence that he had not at all received any loan from the Complainant, and as such, he was not owing the said amount, was held to have rebutted the presumption under Section 139 of the N.I. Act, and it was held that the Complainant had failed to prove that he had, in fact, advanced the loan to the Accused.

As regards the point about sending legal notice to the Accused by Registered A.D. card and also under the certificate of posting, with a denial from the Accused that he has received the notice, the Appellate Court agreed with the Counsel for the Appellant in submitting that the notice sent by Registered A.D. on the address of the Accused has not been proved to have been delivered to the Accused and it does not lead to the presumption

that the notice was served and therefore, it was held that the finding of the Magistrate was erroneous on that count also.

11. The learned Counsel, Mr. Zaveri, representing the Appellant, the original Complainant, has urged before me that both the impugned judgments reversing the finding of the Trial Court and setting aside the conviction have failed to take into consideration the presumption under Sections 113 and 139 of the N.I. Act read with Section 27 of the General Clauses Act and also under Section 114 of the Indian Evidence Act. He would submit that these presumptions were sought to be rebutted by merely putting questions to the Appellant in his cross-examination to the limited extent, and the incriminating circumstances were only explained under Section 313 of Cr.P.C., which received bare denials. He would submit that the controversy revolves around the legal notice with the A.D. card, which is signed by the Accused, and no specific defence is led by the Accused by entering into the witness box, rebutting the said case pleaded by the Complainant and proved by stepping in the witness box. According to him, the complaint containing the averments along with the acknowledgment A.D. receipt signed on 29.07.2009, in one case, and with the evidence of the Postman in another case, was sufficient to surpass the muster of Section 138(b) and 138(c), for

the Complainant to maintain the said complaint under Section 138(a).

12. During the course of argument, since this appeared to be the focal point, I indicated to the learned Counsel to canvass his arguments on this aspect and if he is able to establish that the findings rendered by the Appellate Court, cannot be sustained, the other point about the cheque being issued towards discharge of the legal liability along with the presumption under the N.I. Act shall be considered.

Mr. Zaveri, therefore, advanced his submissions on this aspect by submitting that the Accused did not dispute that the notices were not received by him, and he did not even dispute his signature by entering into the witness box. Relying upon the presumption under the N.I. Act read with Section 27 of the General Clauses Act, 1897 and Section 114 of the Indian Evidence Act, 1872, Mr. Zaveri would submit that it was for the Accused to rebut the presumption as regards the presumption about the legal notice being duly received by him.

13. Mr. Zaveri would place reliance upon the decision of the Apex court in the case of **Uttam Ram Vs. Devinder Singh Jhudan & Another¹**, where the Apex Court has observed thus:

¹ (2019) 10 SCC 287

“28. The accused has failed to lead any evidence to rebut the statutory presumption, a finding returned by both the Trial Court and the High Court. Both Courts not only erred in law but also committed perversity when the due amount is said to be disputed only on account of discrepancy in the cartons, packing material or the rate to determine the total liability as if the appellant was proving his debt before the Civil Court. Therefore, it is presumed that the cheques in question were drawn for consideration and the holder of the cheques i.e., the appellant received the same in discharge of an existing debt. The onus, thereafter, shifts on the accused- appellant to establish a probable defence so as to rebut such a presumption, which onus has not been discharged by the respondent.”

14. On the second aspect of service of notice and its receipt by the Accused, he would place reliance upon the decision of the Apex Court in case of **C.C. Alavi Haji Vs. Palapetty Muhammed & Another²**, where the Three-Judges Bench, answered a reference made by a Two-Judge Bench, pertaining to the question of service of notice in terms of clause (b) of proviso to Section 138 of the Negotiable Instrument Act 1881 and the question being formulated as below:-

“Whether in absence of any averments in the complaint to the effect that the accused had a role to play in the matter on non-receipt of legal notice; or

² (2007) 6 SCC 555

that the accused deliberately avoided service of notice, the same could have been entertained keeping in view the decisions of this Court in D.Vinod Shivappa Vs. Nanda³.

He would rely upon the following observations in the said decision:-

“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 GC Act is a far stronger presumption. Further, while Section 114 of Evidence Act refers to a general

³ (2006) 6 SCC 456

presumption, Section 27 refers to a specific presumption.

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 inspite 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 Singh⁴; State of M.P. Vs. Hiralal⁵ and V.Raja Kumari Vs. P.Subbarama Naidu⁶]. 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.

⁴ (1992) 1 SCC 647

⁵ (1996) 7 SCC 523

⁶ (2004) 8 SCC 774

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 GC 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 *K. Bhaskaran Vs. Sankaran Vaidhyan Balan*⁷, 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."

⁷ (1999) 7 SCC 510

15. At the outset, it is necessary to reproduce Section 138 of the Negotiable Instruments Act, which also provide for the conditions pertaining to the notice to be given to the Drawer in the form of clause (b) and (c) of the proviso. The Section reads thus:-

“138. Dishonour of cheque for insufficiency, etc., of funds in the account.— Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a

notice in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.”

16. In order to attract Section 138, which constitutes an offence, upon dishonour of certain cheque for insufficiency of funds in the Account, the Section itself contemplate that when any cheque is drawn by a person on an Account maintained by him for payment of any money due to another person on account of discharge of some liability, is returned by the Bank, unpaid, either because the money standing to the credit of the Account is insufficient or it exceeds the amount arranged to be paid, such person is deemed to have committed an offence, if the cheque has been presented to the Bank within a period of six months from the date on which it is drawn or within the period of its validity. In addition, it is also necessary that the Payee or Holder, in due course, as the case may be, makes a demand for payment of the amount of money by giving notice in writing to the Drawer of the cheque, within 30 days of receipt of information that the Bank has returned the

cheque unpaid, and the Drawer of such cheque on receipt of such notice fails to make the payment within a period of 15 days.

In order to attract an offence under Section 138, it is necessary, that when the cheque is dishonored, a notice is addressed by the Complainant to the Accused asking him to make the payment under the cheque, and if the Drawer of the cheque fails to make the payment of the money within a period of 15 days from “receipt of the notice”, an offence under Section 138 is attracted.

It therefore becomes essential to determine whether the Drawer has failed to make the payment pursuant to the notice being received by him, as the complaint can be filed under Section 138, only upon such a contingency.

17. At this juncture, it is necessary for me to make a reference to Section 27 of the General Clauses Act, 1897 which is the provision covering the service by post, and the said provision reads thus:-

“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.”

The service by post within the meaning of Section 27 shall be deemed to be effective by properly addressing, pre-paying and posting by Registered post, a letter containing the document, and such a letter shall be presumed to be duly delivered in the ordinary course of post.

What is most important, is the letter being properly addressed to the Noticee.

18. In the first Appeal i.e. Criminal Appeal No. 56 of 2014, the notice has been sent to the Accused by post under a certificate of post and the acknowledgment i.e. Exhibit-E, reveals the full address of the Accused as Jose Remedios A.A. Rodrigues, B4, Riviera Residency, PDA Plots, Alto Porvorim, Bardez, Goa. The date and stamp of office delivery (acknowledgement) is scribed as 06.08.2010, whereas under the caption signature and name, there appears to be a signature of “Trella” with an endorsement of 05.08.2010.

PW-4, the Postman, responsible for the delivery of post mail in PDA colony, Alto Porvorim, deposed that he delivered the Registered A.D. letter at the address mentioned in the envelope

and obtained the signature of the party who had received the envelope.

On being confronted with the A.D. card under Exhibit-E, he identified the signature and name of the person who received the envelope. In cross-examination, he admitted that the registered envelope was handed over by him to a girl named Trella, aged 15 years.

Admittedly, it was not established by the Complainant that Trella was a member of the family of the Accused, as no evidence to that effect is lead. Since it is not established that the A.D. was signed by the Accused or any Member belonging to his family, it cannot be concluded that the notice was duly received by him.

A perusal of Order V, Rule 15 of CPC make it clear that if the summons are served on any adult member of the family, whether male or female, residing with the Noticee, when he is absent from his residence, that would be considered to be a service upon the Defendant. The explanation appended to the said Rule state that a servant is not a member of the family within the meaning of the Rule. The relevant provision read thus:-

“15. Where service may be on an adult member of defendant’s family. - Where in a suit the defendant is absent from his residence at the time when the service of summons is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and he has no

agent empowered to accept service of the summons on his behalf, service may be made on any adult member of the family, whether male or female, who is residing with him.

Explanation-A servant is not a member of the family within the meaning of this rule.”

In absence of any evidence being brought on record that the girl was a member of the family of the Accused and in any case, since PW-4 has deposed that she was aged 15 years, the acknowledgment signed by her, is not a proof of the service being effected upon the Accused.

19. In the other Appeal i.e. Criminal Appeal No. 55 of 2014, the A.D. receipt has given the address as “Jose Remedios A.A. Rodrigues, Alto Porvorim Bardez, Goa” and there is a signature scribed on the A.D., which is not proved to be of the Accused.

20. Dealing with the argument of the learned Counsel for the Appellant, that the notices have been duly received by the Accused, on perusal of the factual aspects in both the Appeals, it is evident that in the first case, the receipt acknowledgment is signed by some girl, unconnected to the Accused, and in second case, the acknowledgment is signed on an A.D. receipt, which do not contain the full address, and therefore, the presumption under

Section 27 of the General Clauses Act, 1897 shall not come into force, as the Appellate Court had rightly observed that Porvorim is a big area and no letter can be served on such scanty address, and the presumption shall operate when a letter is addressed to the Noticee on a proper address by pre-paying and posting by Registered post. The full address on the envelope may be proof of sending of the notice, but it is not a proof of receipt of the notice.

The presumption under Section 114 of the Indian Evidence Act, 1872 that under the common course of business, and particularly, as to illustration (f) i.e. whether a letter was received, it is shown to have been posted, but the usual course of the post was interrupted by disturbance, which enables the Court to presume the existence of any fact, which it thinks likely to have happened in the course of natural events, human conduct and public and private business, in their relation to the facts of a particular case.

However, when it is not proved by the Complainant that the girl who accepted the notice is a member of the family of the Accused, in the normal course of business, the notice could have been received by any girl in the locality, playing or wandering around at the time when the Postman reached the spot. Unless and until it is proved that she belongs to the family and notice is

accepted by her, in the normal course of business, it cannot be said that the service is complete.

In other case an address as scanty as found on the acknowledgment, is not sufficient for delivery as Porvorim is a big area and tracing a person merely on his name is an impossibility and therefore, the presumption under Section 114 is not available.

21. In the wake of the aforesaid discussion, since in both the cases, I find that the Accused is not served with the notice issued by the Complainant and the reliance placed on Section 27 of the General Clauses Act by the Trial Judge, cannot be justified, I am of the view that in absence of notice being received, the contingencies stipulated under Section 138(c) of the Drawer having failed to make the payment within 15 days from the date of notice, has not arisen.

The Appellate Court has therefore, rightly appreciated the evidence rendered and being satisfied that the offence under Section 138 of the N.I. Act is not made out, has rightly acquitted the Accused Mr. Jose Remedios in both the cases.

In view of the above, both the Criminal Appeals stand dismissed.

BHARATI DANGRE, J.