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CRL A No. 512 of 2017



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-11-2025

CORAM

THE HONOURABLE MR JUSTICE M. NIRMAL KUMAR

CRL A No. 512 of 2017

1. M.S.Durairaj,
D.No.2/715, M.M.Nagar,
Mookandapalli Village, Sipcot Post,
Hosur Taluk, Krishnagiri District.

Appellant(s)

Vs

1. M.Ravikumar,
Proprietor,
M/s.Suba Dharani Product,
L-965, New Rayakottai Road,
Hudco, Hosur Taluk,
Krishnagiri District.

Respondent(s)

PRAYER

This Appeal has been filed seeking to set aside the judgment dated 07.03.2016 in C.A.No.66 of 2015 on the file of the Principal District and Sessions Judge at Krishnagiri reversing the judgment dated 11.09.2015 in STC No.204 of 2014 on the file of the Judicial Magistrate, Fast Track Court, Hosur.



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For Appellant(s): M/s.A.R.Nixon

For Respondent(s): Ms.T.Harshana, Legal aid
counsel

ORDER

The appellant/complainant filed a private complaint against the respondent under Section 138 of the Negotiable Instruments Act, 1881 (in short, 'the Act') in STC No.204 of 2014. The trial Court, by judgment dated 11.09.2015, convicted the respondent and sentenced him to undergo six months simple imprisonment and also directed to pay cheque amount of Rs.10 lakhs as compensation.

2. Aggrieved over the same, the respondent preferred an appeal before the Sessions Court in C.A. No.66 of 2015. The learned Sessions Judge by judgment dated 07.03.2016, allowed the appeal, setting aside the conviction and sentence imposed by the trial Court. Against which, the present appeal has been filed.



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3. The complaint filed by the appellant is that the appellant and the respondent are the friends known to each other. The respondent is the Proprietor of M/s.Suba Dharani Food Products and the respondent had approached the appellant on 05.05.2014 for financial assistance of Rs.10 lakhs to develop the Food Products business. On the same day, the appellant gave a sum of Rs.10 lakhs to the respondent and in repayment and discharge of the liability, the respondent issued a post-dated cheque on 07.08.2014, for a sum of Rs.10 lakhs drawn on State Bank of India, Hosur Branch. On informing the respondent, the appellant presented the said cheque on 07.08.2014 through his bankers viz, Axis Bank, Hosur Branch. But the same was returned on the same day with return memo, for the reason "funds insufficient". The appellant sent a statutory notice on 05.09.2014 through RPAD as well as by private courier. The respondent refused to receive the notice sent through RPAD and returned on 06.09.2014, the courier cover was also returned on 08.09.2014 and thereby the notice could not be served. Notices sent through RPAD as well as through courier were returned with an endorsement as "party refused". Thereafter, the



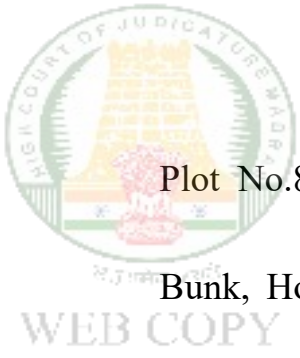
appellant filed a complaint and he had examined himself as PW1 and marked Exs.P1 to P8. The respondent examined himself as DW1 and the Manager of Indian Bank, Jujuwadi Branch as DW2 and marked Exs.D1 to D3.

4. In the present case, the respondent himself examined as DW1 and he not disputed the relationship and receiving the amount towards loan from the appellant, but he takes a stand that during the year 2013, he had taken a loan of Rs.3 lakhs from the appellant and Rs.1 lakh paid through cheque and later Rs.75,000/- has been paid twice in cash. The repayment of Rs.1 lakh by cheque is reflected in his statement of Bank Account maintained with the Indian Bank, marked as Ex.D2 and further, he alleges that nine blank cheques received by the appellant and those cheques were signed but unfilled and later, one of the cheques mis-used by filling up Rs.10 lakhs and presented in the bank, which is marked as Ex.P1.

5. The learned counsel submitted that the appellant examined as PW1 and the issuance of statutory notice through a registered post and by Courier. The



respondent not denied the cheque or his signature therein, but he takes a stand that the cheque was not issued for discharge of liability for Rs.10 lakhs. Further, a detailed cross-examination was made, but could not cull out any answer in his favour and the trial Court, finding that the respondent not denied the signature and the cheque, came to the conclusion that Sections 118 and 139 of the Act attracted. But the respondent contended that statutory notice sent to wrong address. The respondent not specifically denied that no such Company in the name of M/s.Subha Dharani Food Products is existing and he has nothing to do with the said M/s.Suba Dharani Food Products. The admitted position is that the respondent is Proprietor of M/s.Subha Dharani Food Products. However, after 2013, he was running the business in the name of M/s.Dharani Foods. According to the respondent, in the year 2013, he had borrowed only Rs.3 lakhs and repaid a sum of Rs.1 lakh through a Cheque under Ex.D2 drawn on the Indian Bank and the Statements of accounts marked as Ex.D1 and D3, wherein, the present address of M/s.Dharani Food Products is given. But strangely, the respondent not produced the statement of accounts of State Bank of Travancore to show that the address mentioned as “M/s.Suba Dharani Food Products at



Plot No.820/B, Parandapalli Village, near Shivam Poly Product, H.P.Petrol

Bunk, Hosur, Krishnagiri District” does exist, thereby exposes falsity of the

respondent. In 313 Cr.P.C. questioning, he admits statutory notice sent to the

Company address, but he was not in the Company at that point of time and the

persons who were present in the company informed about the statutory notice.

Once the respondent admits that the notice has been sent to the company

address and he had knowledge of the same then it is deemed service as per

Section 27 of the General Clauses Act, 1897. The statutory notice sent to the

respondent was returned with an endorsement 'refused'.

6.This Court, time and again has held that once notice sent to the address known to the complainant and thereafter, if it is returned for some reason or the other, it shall be construed as “deemed service”. Hence, the notice duly served.

The respondent not probablised his defence by producing any other cogent material. The trial Court rightly convicted the respondent. On the other hand, the lower appellate Court without going into the merits of the case, considered service of statutory notice held appellant failed to prove that notice was taken



to the correct address of the respondent, which is contrary to Section 27 of the General Clauses Act. The learned counsel for the appellant would urge this Court to set aside the judgment of the lower appellate Court and to restore the judgment of the trial Court.

7.Ms.T.Harshana, learned Legal Aid Counsel appearing for the respondent at the out set has strongly refuted the contentions raised on behalf of the appellant. She would contend that as per Section 138(b) of the Act, the holder of the cheque ought to have made a demand for the payment of the cheque amount by serving a notice in writing to the drawer of the cheque within fifteen days of the receipt of the information from the bank, however, in the present case, no notice was served on the drawer of the cheque, viz., the respondent herein. She would submit in support of her case that the respondent had examined himself as DW1 and also examined the Bank Manager of Indian Bank as DW2 and marked Ex.D1/Statement of Account to prove that the respondent started the business in the name of M/s.Dharani Foods, at No. L965, New R.K. Hudco, Hosur-635 109. While so, Ex.P4, statutory notice had



addressed to “Plot No.820/B, Parandapalli village, near Shivam Poly Product, H.P.Petrol Bunk, Hosur, Krishnagiri District, which is a different place. Further,

Ex.P5/postal receipt, Ex.P6/ courier receipt, Ex.P7/postal returned cover and Ex.P8/courier returned cover, are confirm that the statutory notice was taken only to the address at ““Plot No.820/B, Parandapalli village, near Shivam Poly Product, H.P.Petrol Bunk, Hosur, Krishnagiri District” and admittedly, the respondent was not carrying the business in the above mentioned address. She pointed out that Section 138(b) mandates that the statutory notice ought to be sent to the correct address of the drawer of the cheque so as to make him aware of the dishonour of the cheque and since, in the present case, it has been sent to incorrect address and the respondent was not carrying on business in that address, the service of legal demand notice is not a deemed service, the condition under Section 138 of the Act are not complied. In this regard, the learned counsel relied upon a decision of this Court in “*M/s.Sri Sairam Enterprises and others Versus M/s.Peps Industries Pvt.Ltd.*” in Crl.O.P.No.303 of 2019, dated 13.07.2022, wherein, this Court has held in paragraphs 7 and 8 as under:



“7. The specific fact of the case in hand is that knowing well that the petitioner has shifted his business premises from Padi to Madhavaram and having supplied goods in the new address for quite few months and also entered into a memo of understanding which was reduced in writing. In the minutes wherein the address of the petitioner is disclosed, for the reasons best known to him, the statutory notice has been sent to the old address with knowledge the addressee had shifted from that address. It is also pertaining to note that the cheque dated 23.02.2019 when presented for collection on 01.05.2018, the same was returned next day. However, the statutory notice dated 26.05.2018 was sent and thereafter, received the return postal cover with an endorsement “Customer Shifted.” The complainant though had two more days to cause notice to the correct address, but he did not choose to do so.

8. Even after the knowledge of the change of address, causing notice to the old address is not a deemed service of statutory notice. Service of notice is a mandatory requirement to take cognizance of the complaint under Section 138 of N.I.Act. It is viewed as a deliberate attempt to cause notice to old address and defeat the right of the



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accused to place his defence through reply notice, which is a valuable right of an accused in complaint under Section 138 of N.I.Act.”

8. Therefore, the learned counsel would submit that the failure to serve notice to the correct address of the drawer of the cheque, will nullify the complaint as it fails to meet statutory condition and requirement.

9. The learned counsel for the respondent would further submit that originally the respondent taken a loan of Rs.3 lakhs, for which, a sum of Rs.1 lakh paid through cheque and later Rs.75,000/- paid twice in cash, to prove this, the respondent examined himself as DW1 and marked Exs.D1 to D3, viz., Cheque and the Bank Statement of Accounts and having considered all these aspects, the lower appellate Court rightly allowed the appeal and set aside the judgment of the trial Court, which requires no interference. Hence, the learned counsel would urge this Court to dismiss the present appeal while confirming the judgment of the lower appellate Court.



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10. Heard the learned counsel for the appellant and the learned counsel for the respondent and perused the materials placed on record.

11. In the present case, it is the specific case of the appellant that the respondent borrowed a sum of Rs.10 lakhs from him on 05.05.2014 to develop Food product business and in repayment of the loan, the respondent issued a cheque for Rs.10,00,000/- bearing No.005467 dated 07.08.2014 drawn on State Bank of Travancore, Hosur Branch, which on presentation to the payee's Axis Bank, Hosur Branch, was dishonoured for the reason 'insufficient funds' and after statutory notice sent to the respondent, he failed to make repayment, which prompted the appellant to file the complaint. On the other hand, according to the respondent, he had not borrowed Rs.10,00,000/- from the appellant, but borrowed a sum of Rs.3,00,000/- and the appellant had received nine signed blank cheques from him and one of the cheque mis-used by filling for Rs.10 lakhs. It is pertinent to note that the respondent not denied the issuance of the cheque and his signature. It is well settled that once the signature in the cheque



is admitted, the presumption envisaged in Section 118 of the Act can be inferred that the cheque was made or drawn for consideration on the date which the cheque bears. Further, Section 139 of the Act the Court to presume that the holder of the cheque received it from the drawer of the cheque towards discharge of any debt or liability. The defence taken by the respondent is that he handed over unfilled signed cheques to the appellant. Section 20 of the Act authorise to give *prima facie* authority to the holder to complete it into a negotiable instrument for any amount specified therein. There is no law that a person drawing cheques has to necessarily fill it with his own handwriting. The respondent not denied his signature on the cheque which according to him, issued unfilled and once, he admitted it, he cannot escape from his liability.

12.The learned counsel for the respondent, throughout contended that legal notice is mandatory as per Section 138 of the Act. In this case, statutory notice not sent to the correct address of the drawer of the cheque to prove the same, the respondent examined the Manager of the Indian Bank and marked Exs.D1 and D3, viz., statements of Accounts, wherein, the address of the drawer



of the cheque was mentioned as “ M/s.Dharani Foods, at No. L965, New R.K.

Hudco, Hosur-635 109”, whereas, Ex.P4, statutory notice addressed to “Plot

No.820/B, Parandapalli village, near Shivam Poly Product, H.P.Petrol Bunk,

Hosur, Krishnagiri District which is a different address, confirms notice not

served on the respondent. It is pertinent to note that the cheque Ex.P1 was

issued by the respondent in the name of M/s.Suba Dharani Food Products drawn

on the State Bank of Travancore, Hosur and the respondent admit that he is the

proprietor of both M/s.Suba Dharani Food Product and M/s.Dharani Foods.

During examination under Section 313 Cr.P.C., the respondent not denied that

the statutory notice taken to different address, which does not belong to him.

Though the respondent himself examined as DW1, not referred or disputed to

the statutory notice Ex.P4 or the return covers Ex.P5 and P8. Further, the

respondent not sent any communication seeking for return of blank cheques

prior to the statutory notice. The statutory notice sent to the respondent returned

with endorsement 'refused'. Once the respondent admits that the notice sent to

his company address, it is deemed service as per Section 27 of the General

Clauses Act, 1897. In this regard, it is beneficial to refer the decision of the



Hon'ble Supreme Court relied by the learned counsel for the appellant,

“C.C.Alavi Haji versus Palapetty Muhammed and another” reported in (2007)

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6 SCC 555, wherein, it has been held as under:

“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; State of M.P. Vs. Hiralal & Ors. And V.Raja Kumari Vs. P.Subbarama Naidu & Anr.] It is, therefore, manifest that in view of the



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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.”

13.The decision of this Court in the case of “*M/s.Sri Sairam Enterprises*” cited supra, by the respondent will not apply to the facts of the present case. In the said case, even after the knowledge of the change of address, causing notice to the old address considered not a deemed service of statutory notice. In the present case, it is not in dispute that the respondent is the Proprietor of both M/s.Suba Dharani Food Products and M/s.Dharani Food Products and in fact, he issued Ex.P1 cheque in the name of M/s.Suba Dharani Food Products drawn on State Bank of Travancore, Hosur and he did not deny that the address to which the statutory notice was sent, does not belong to him. Further, no communication sent by the respondent intimating the change of address in the name of M/s.Dharani Food Products so as to make the appellant aware of the



new address. The trial Court considered the evidence and materials and dealt with the issue in proper perspective and rightly convicted the appellant finding that the respondent had failed to probablise his defence, on the contrary the lower appellate Court erroneously held that statutory notice under Section 138(b) of the Act not served to the respondent. It is seen respondent conveniently not produced the Statement of Account from State Bank of Travencore, in which the cheque, Ex.P1 drawn to prove the address of M/s.Suba Dharani Food Products not evident in the notice address, the lower appellate Court on its own, had given a finding without materials that no statutory notice served on the respondent, which finding is perverse and not sustainable and hence, the judgment of the lower appellate Court is set aside.

14.Accordingly, this Criminal Appeal is allowed and the judgment of conviction passed by the trial Court confirmed. This Court places its appreciation for the strenuous efforts taken in doing research and for effective and efficacious arguments by Ms.Harshana, Legal Aid counsel for the



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respondent. The State Legal Services Authority is directed to pay the remuneration to her as per the Rules.

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Index:Yes/No

Neutral Citation:Yes/No



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1. Principal District and Sessions Judge at Krishnagiri
2. Judicial Magistrate, Fast Track Court, Hosur.
3. M. Ravikumar
Proprietor, M/s. Suba Dharani Product,
L-965, New Rayakottai Road, Hudco,
Hosur Taluk, Krishnagiri District.



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M.NIRMAL KUMAR J.,
dn

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