

## **Sridhar M.A. vs Metalloy N. Steel Corporation on 27 January, 1998**

**Equivalent citations:** [1999]98COMPCAS805(SC), (2000)125PLR670, (2000)1SCC397

**Author:** G.N. Ray

**Bench:** G.N. Ray

### **JUDGMENT**

1. Leave granted.

2. Heard learned counsel for the parties.

3. The impugned order has been passed by the High Court of Karnataka on November 5, 1997, allowing Criminal Appeal No. 798 of 1995, which was filed by the respondent challenging the order of acquittal passed by the learned IXth Additional Chief Metropolitan Magistrate, Bangalore City, on September 5, 1995, in C. C. No. 20696 of 1994 in a criminal case under section 138 of the Negotiable Instruments Act, 1881. The case of the appellant is that the appellant did not get notice which is the sine qua non for initiating criminal proceedings under Section 138 of the Negotiable Instruments Act. Therefore, the trial court was justified in passing the order of acquittal. The High Court has set aside such order of acquittal and passed the order of conviction and sentence by proceeding on the basis of deemed service. Although, in an appropriate case deemed service is to be accepted by the court, as indicated in the decision of this court in State of Madhya Pradesh v. Hiralal [1996] 1 JT SC 669 ; but it may also be noted that such presumption of deemed service is not a matter of course in all cases and deemed service is to be accepted in the facts of each case. Considering the facts of the present case, it appears to us that the appellant is entitled to the benefit of doubt as to whether such service, in fact, had been effected on the appellant. Considering the fact that the appellant has also deposited a sum of Rs. 1,25,000 which constitutes the principal sum of Rs. 1,00,000 and the fine of Rs. 25,000 as directed by the High Court, we think that in the special facts of the case the order of conviction and sentence passed by the High Court should be set aside. We order accordingly. The respondent is, however, entitled to withdraw a sum of Rs. 1,15,000 by way of principal and the cost of the hearing of this appeal and the appellant will be entitled to withdraw the balance sum of Rs. 10,000. The appeal is disposed of accordingly.