Supreme Court of India
M/S Ajeet Seeds Ltd vs K Gopala Krishnaiah on 16 July, 1948
Author: .....J.
Bench: Ranjana Prakash Desai, N.V. Ramana

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1523 OF 2014
[Arising out of Special Leave Petition (Crl.)No.8783 of 2013]

M/s. Ajeet Seeds Ltd. … Appellant

Vs.

K. Gopala Krishnaiah … Respondent

J U D G M E N T

(SMT.) RANJANA PRAKASH DESAI, J.

1. Leave granted.

2. The appellant is the complainant. He has challenged the judgment and order dated 21/03/2013 passed by the High Court of Judicature of Bombay, Bench at Aurangabad in Criminal Writ Petition No.1131 of 2012 whereby the High Court has quashed the complaint filed by him under Section 138 of the Negotiable Instruments Act, 1881 ('the NI Act') being SCC No. 4118 of 2007 in the court of Chief Judicial Magistrate, First Class, Aurangabad.

3. For the purpose of disposal of this appeal, it is not necessary to narrate all the facts of the case. Suffice it to say that the complaint was filed alleging that the cheque issued by the respondent-accused for repayment of a legally recoverable debt bounced. On 17/6/2011 learned Magistrate issued process. The respondent-accused filed a criminal revision application before the Additional Sessions Judge, Aurangabad mainly on the assertion that the demand notice was not served on him. The said criminal revision application was rejected. Being aggrieved by the said order, the respondent-accused filed criminal writ petition in the High Court under Section 482 of the Code of Criminal Procedure, 1973 ('the Cr.P.C.'). The High Court quashed the complaint on a short ground that on reading verification of the complaint dated 17/6/2011, it is explicit that there are no recitals to demonstrate that the notice issued under Section 138 of the NI Act by the complainant was served upon the respondent-accused on any specific date. The High Court observed that there is no proof that either the notice was served or it was returned unserved/unclaimed and that that there is no averment in the complaint about the same. The High Court concluded that, therefore, there could not be a cause of action to prosecute the accused under

Section 138 of the NI Act. For coming to this conclusion, the High Court relied on the order of this Court in Shakti Travel & Tours v. State of Bihar & Anr[1]. The extract on which the High Court relied upon could be quoted :

"2. The accused who is the appellant, assails the order of the High Court refusing to quash the complaint filed under Section 138 of the Negotiable Instruments Act. The only ground on which the learned counsel for the appellant prays for quashing of the complaint is that on the assertions made in paragraph 8 of the complaint, it must be held that notice has not been served and, therefore, an application under Section 138 could not have been maintained. Undoubtedly, the accused has a right to pay the money within 15 days from the date of the service of notice and only when it fails to pay, is it open for the complainant to file a case under Section 138 of the Negotiable Instruments Act. That being the position and in the complaint itself having not been mentioned that the notice has been served, on the assertions made in para 8, the complainant itself is not maintainable. We accordingly quash the complaint."

4. We have heard, at some length, Mr. S.S. Choudhari, learned counsel appearing for the appellant. Counsel submitted that the High Court has erred in quashing the complaint on the ground that complaint is silent about service of notice. Counsel submitted that in C.C. Alavi Haji v. Palapetty Muhammed & Anr.[2], a three Judge Bench of this Court has conclusively decided this issue. It is held in this case that it is not necessary to aver in the complaint that notice was served upon the accused. The impugned order, therefore, deserves to be set aside.

5. We are inclined to agree with the counsel for the appellant.

6. In C.C. Alavi Haji, a three-Judge Bench of this Court was dealing with the question referred by a two-Judge Bench for consideration. The referring Bench was of the view that in D. Vinod Shivappa v. Nanda Belliappa[3], this Court did not take note of Section 114 of the Evidence Act in its proper perspective. It felt that presumption under Section 114 of the Evidence Act being a rebuttable presumption, the complainant should make certain necessary averments to raise the presumption of service of notice; that it was not sufficient for a complainant to state that a notice was sent by registered post and that the notice was returned with the endorsement 'out of station' and that there should be a further averment that the addressee-drawer had deliberately avoided receiving the notice or that the addressee had knowledge of the notice, for raising a presumption under Section 114 of the Evidence Act. The following question was, therefore, referred to the larger Bench for consideration.

"Whether in absence of any averments in the complaint to the effect that the accused had a role to play in the matter of non-receipt of legal notice; or that the accused deliberately avoided service of notice, the same could have been entertained keeping in view the decision of this Court in Vinod Shivappa's case?"

7. Dealing with the above question, this Court referred to K. Bhaskaran v. Sankaran Vaidhyan Balan[4], where this Court referred to Section 27 of the General Clauses Act, 1897 ('the GC Act') and observed that since the NI Act does not require that notice should only be given by 'post' in a case

where the sender has despatched the notice by post with correct address written on it, Section 27 of the GC Act could be profitably imported and in such a situation service of notice is deemed to have been effected on the sender unless he proves that it was really not served and that he was not responsible for such non-service.

8. This Court then referred to Vinod Shivappa's case, where the above aspects have been highlighted. This Court quoted the following paragraph from Vinod Shivappa with approval.

"15. We cannot also lose sight of the fact that the drawer may by dubious means manage to get an incorrect endorsement made on the envelope that the premises has been found locked or that the addressee was not available at the time when postman went for delivery of the letter. It may be that the address is correct and even the addressee is available but a wrong endorsement is manipulated by the addressee. In such a case, if the facts are proved, it may amount to refusal of the notice. If the complainant is able to prove that the drawer of the cheque knew about the notice and deliberately evaded service and got a false endorsement made only to defeat the process of law, the Court shall presume service of notice. This, however, is a matter of evidence and proof. Thus even in a case where the notice is returned with the endorsement that the premises has always been found locked or the addressee was not available at the time of postal delivery, it will be open to the complainant to prove at the trial by evidence that the endorsement is not correct and that the addressee, namely the drawer of the cheque, with knowledge of the notice had deliberately avoided to receive notice. Therefore, it would be pre-mature at the stage of issuance of process, to move the High Court for quashing of the proceeding under Section 482 of the Code of Criminal Procedure. The question as to whether the service of notice has been fraudulently refused by unscrupulous means is a question of fact to be decided on the basis of evidence. In such a case the High Court ought not to exercise its jurisdiction under Section 482 of the Code of Criminal Procedure."

9. This Court then explained the nature of presumptions under Section 114 of the Evidence Act and under Section 27 of the GC Act and pointed out how these two presumptions are to be employed while considering the question of service of notice under Section 138 of the NI Act. The relevant paragraphs read as under:

"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 G.C. Act is a far stronger presumption. Further, while Section 114 of Evidence Act refers to a general presumption, Section 27 refers to a specific presumption. For the sake of ready reference, Section 27 of G.C. Act is extracted below:

"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".

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 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 (1992) 1 SCC 647; State of M.P. Vs. Hiralal & Ors. (1996) 7 SCC 523 and V.Raja Kumari Vs. P.Subbarama Naidu & Anr. (2004) 8 SCC 74] 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."

10. It is thus clear that Section 114 of the Evidence Act 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. Section 27 of the GC Act gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. It is not necessary to 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.

11. Applying the above conclusions to the facts of this case, it must be held that the High Court clearly erred in quashing the complaint on the ground that there was no recital in the complaint that the notice under Section 138 of the NI Act was served upon the accused. The High Court also erred in quashing the complaint on the ground that there was no proof either that the notice was served or it was returned unserved/unclaimed. That is a matter of evidence. We must mention that in C.C. Alavi Haji, this Court did not deviate from the view taken in Vinod Shivappa, but reiterated the view expressed therein with certain clarification. We have already quoted the relevant paragraphs from Vinod Shivappa where this Court has held that service of notice is a matter of evidence and proof and it would be premature at the stage of issuance of process to move the High Court for quashing of the proceeding under Section 482 of the Cr.P.C. These observations are squarely attracted to the present case. The High Court's reliance on an order passed by a two-Judge Bench in Shakti Travel & Tours is misplaced. The order in Shakti Travel & Tours does not give any idea about the factual

matrix of that case. It does not advert to rival submissions. It cannot be said therefore that it lays down any law. In any case in C.C. Alavi Haji, to which we have made a reference, the three- Judge Bench has conclusively decided the issue. In our opinion, the judgment of the two-Judge Bench in Shakti Travel & Tours does not hold the field any more.

13. In the circumstances, the impugned judgment is set aside and the instant complaint is restored. The appeal is allowed.

.....J.

(Ranjana Prakash Desai) .....J.

(N.V. Ramana) New Delhi;

July 16, 2014.

---

[1] (2002) 9 SCC 415
[2] (2007) 6 SCC 555
[3] (2006) 6 SCC 456
[4] (1999) 7 SCC 510

---