# IN THE HIGH COURT OF MADHYA PRADESH
# A T J A B A L P U R

**BEFORE**

**JUSTICE ACHAL KUMAR PALIWAL**

**ON THE 9th OF JULY, 2025**

**CRIMINAL APPEAL No. 1498 of 2002**

***G.D. NARANG***

*Versus*

***RAMESH KOTHARI***

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## Appearance

*Shri Ajay Kumar Mishra – Senior Advocate with Ms. Namrata Purohit, Advocate for the appellant.*

*Shri Makboor Khan – Advocate for the respondent.*

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## ORDER

This appeal has been filed under Section 378(4) of Code of Criminal Procedure against the judgment dated 22.01.2002 passed by JMFC, Bhopal in RT No. 968/2001, whereby respondent/accused has been acquitted of an offence under Section 138 of N.I. Act.

**2.** Complainant's case in brief is that complainant is owner and landlord of duplex house No. HX-1 HIG E-7 extension, Sahpura, Bhopal. Accused is his tenant in aforesaid building. Accused issued a cheque to complainant for payment of rent but the same got dis-honored on account of insufficient fund. Thereafter, complainant filed a complaint under Section 138 of N.I. Act. against the accused.

**3.** Learned senior counsel for the appellant submits that appellant is landlord and respondent/accused is his tenant. Ex. P/1's cheque was issued for payment of arrears of rent. There is no dispute with respect to the handwriting, signature etc. of Ex. P/1's cheque. Appellant received Ex. P/2's information on 13.10.1993 and Ex. P/3's information on 14.10.1993, Ex. P/4's demand notice was issued to respondent/accused on 20.10.1993. As per Section 138 (b) of N.I. Act, notice is required to be issued within 15 days from date of receipt of information pertaining to dishonour of cheque. Thus, Ex. P/4's demand notice was issued within limitation prescribed in the law. It is correct that aforesaid notice was received by respondent/accused on 02.11.1993 (Ex. P/5). Learned trial Court has wrongly calculated period mentioned in Section 138(b) of N.I. Act. Trial Court has calculated limitation from the date of receipt of notice which is against provision of law as mentioned in Section 138(b) of N.I. Act and principle laid down by Hon'ble Apex Court in **C.C. Alavi Haji Vs. Palapetty Muhammed and another, (2007) 6 SCC 555**. Hence, learned trial Court has wrongly acquitted respondent/accused. Therefore, appeal filed by the appellant is allowed and respondent/accused be convicted for offence under section 138 of N.I. Act.

**4.** Learned counsel for the respondent, after referring to Ex. D/1, submits that as per aforesaid document on 30.06.1995, no arrears of rent was due for payment. Further, as per para 11 of the impugned judgment, within 15 days demand notice has not been received by the respondent. Therefore, appellant's

complaint is time barred. Learned trial Court has rightly dismissed appellant's complaint. No interference is required to the same. Hence, appeal filed by the appellant be dismissed.

**5**. Heard. Perused record of the case.

**Analysis and findings :-**

**6.** From impugned judgment as well as complaint filed by the appellant/complainant and testimonies of complainant G.D.Narang (PW-1), Dr.Ajay Narang (PW-2), Ashok Dubey (PW-3) and respondent/accused's examination under Section 313 of Cr.P.C. and documents (Ex.P/1 to P/9), it stands clearly established and there is no dispute with respect to that appellant is land lord and owner of house No.H-X-1, HIG duplex situated E-7, Shahpura, Bhopal and in aforesaid house respondent/accused was residing as tenant, Ex.P/1's cheque was issued by respondent/accused for payment of rent and it got dishonored on account of insufficient fund.

**7.** Sole issue before this Court is as to whether Ex.P/4's demand notice was issued within limitation as prescribed under proviso (b) of Section 138 of NI Act, which reads as under :

> "Provided that nothing contained in this section shall apply unless ……...
> *(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 fifteen days of the receipt of information*

*by him from the bank regarding the return of the cheque as unpaid; and"*

**8.** Aforesaid provision has been dealt with and discussed by Hon'ble Apex Court in the case of **C.C.Alavi Hajzi (supra)**, which is as under :

"**7**. The issue with regard to interpretation of the expression giving of notice used in Clause (b) of the proviso is no more res integra. In **K. Bhaskaran Vs. Sankaran Vaidhyan Balan & Anr., (1999) 7 SCC 510**, the said expression came up for interpretation. Considering the question with particular reference to scheme of Section 138 of the Act, it was held that failure on the part of the drawer to pay the amount should be within fifteen days of the receipt of the said notice. Giving notice in the context is not the same as receipt of notice. Giving is a process of which receipt is the accomplishment. It is for the payee to perform the former process by sending the notice to the drawer at the correct address and for the drawer to comply with Clause (c) of the proviso. Emphasizing that the provisions contained in Section 138 of the Act required to be construed liberally, it was observed thus:

"20. If a strict interpretation is given that the drawer should have actually received the notice for the period of 15 days to start running no matter that the payee sent the notice on the correct address, a trickster cheque drawer would get the premium to avoid receiving the notice by different strategies and he could escape from the legal consequences of Section 138 of the Act. It must be borne in mind that Court should not adopt an interpretation which helps a dishonest evader and clips

an honest payee as that would defeat the very legislative measure.

21. In *Maxwell's Interpretation of Statues* the learned author has emphasized that "provisions relating to giving of notice often receive liberal interpretation," (vide page 99 of the 12th Edn.) The context envisaged in Section 138 of the Act invites a liberal interpretation for the person who has the statutory obligation to give notice because he is presumed to be the loser in the transaction and it is for his interest the very provision is made by the legislature. The words in Clause *(b)* of the proviso to Section 138 of the Act show that payee has the statutory obligation to make a demand by giving notice. The thrust in the clause is on the need to make a demand. It is only the mode for making such demand which the legislature has prescribed. A payee can send the notice for doing his part for giving the notice. Once it is dispatched his part is over and the next depends on what the sendee does."

**8.** Since in **K.Bhaskaran Vs. Sankaran Vaidhyan Balan, (1999) 7 SCC 510**, the notice issued in terms of Clause (b) had been returned unclaimed and not as refused, the Court posed the question: Will there be any significant difference between the two so far as the presumption of service is concerned? It was observed that though Section 138 of the Act does not require that the notice should be given only by post, yet in a case where the sender has dispatched the notice by post with correct address written on it, the principle incorporated in Section 27 of the General Clauses Act, 1897

(for short G.C. Act) could profitably be imported in such a case. It was held that in this situation service of notice is deemed to have been effected on the sendee unless he proves that it was not really served and that he was not responsible for such non-service.

**9.** All these aspects have been highlighted and reiterated by this Court recently in **D.Vinod Shivappa Vs. Nanda Belliappa, (2006) 6 SCC 456**. Elaborately dealing with the situation where the notice could not be served on the addressee for one or the other reason, such as his non availability at the time of delivery, or premises remaining locked on account of his having gone elsewhere etc; it was observed that if in each such case, the law is understood to mean that there has been no service of notice, it would completely defeat the very purpose of the Act. It would then be very easy for an unscrupulous and dishonest drawer of a cheque to make himself scarce for sometime after issuing the cheque so that the requisite statutory notice can never be served upon him and consequently he can never be prosecuted. It was further observed that once the payee of the cheque issues notice to the drawer of the cheque, the cause of action to file a complaint arises on the expiry of the period prescribed for payment by the drawer of the cheque. If he does not file a complaint within one month of the date on which the cause of action arises under Clause (c) of the proviso to Section 138 of the Act, his complaint gets barred by time. Thus, a person who can dodge the postman for about a month or two, or a person who can get a fake endorsement made regarding his non availability, can successfully avoid his prosecution because the payee is bound to issue notice to him within a period of 30 days from the date of receipt of

information from the bank regarding the return of the cheque as unpaid. He is, therefore, bound to issue the notice, which may be returned with an endorsement that the addressee is not available on the given address. This Court held:

> "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."

> **10**. It is, thus, trite to say that where the payee dispatches the notice by registered post with correct address of the drawer of the cheque, the principle incorporated in Section 27 of the G.C. Act would be attracted; the requirement of Clause (*b*) of proviso to Section 138 of the Act stands complied with and cause of action to file a complaint arises on the expiry of the period prescribed in Clause (*c*) of the said proviso for payment by the drawer of the cheque. Nevertheless, it would be without prejudice to the right of the drawer to show that he had no knowledge that the notice was brought to his address."

**9.** Now, facts/evidence of the case would be examined in the light of aforesaid provision of law and interpretation thereof by Hon'ble Apex Court as aforesaid. In the instant case, appellant/complainant has filed Ex.P/5's receipt dated 2.11.1993, which shows that Ex.P/4's notice was received by respondent/accused on 2.11.1993. Respondent/accused has not adduced any evidence to prove that in receipt Ex.P/5's c to c signatures are not that of respondent. In this connection, respondent/accused has not examined any handwriting expert to prove that on receipt Ex.P/5, C to C signatures are not that of respondent/accused. There is no endorsement on Ex.P/5's receipt or on Ex.P/4's notice that Ex.P/4's notice was not sent on correct address or it was

sent on incomplete address. There is no endorsement on aforesaid that addressee was not found. Hence, returned unserved.

**10**. In the instant case, appellant/complainant received information from Bank about dishonor of Ex.P/1's cheque on 13.10.1993 (Ex.P/2)/15.10.1993 (Ex.P/3) and Ex.P/4's demand notice was sent on 20.10.1993 by registered post. This is also evident from Ex.P/5's receipt. Thus, Ex.P/4's demand notice was sent within 15 days of receipt of information with respect to dishonor of Ex.P./5's cheque.

**11.** Hence, in view of discussion in the foregoing paras as well as provision contained in proviso (b) of Section 138 of NI Act as well as principle of law laid down by Hon'ble Apex Court in the case of **C.C.Alavi Hajzi (supra**), it cannot be said that demand notice (Ex.P/4) sent by appellant/complainant was not within limitation as prescribed under the law and limitation of 15 days cannot be calculated from the date of receipt of demand notice.

**12.** Hence, learned trial Court has materially erred in calculating the limitation from the date of receipt of demand notice and wrongly dismissed appellant's complaint on aforesaid ground.

**13.** Further, in view of Ex.P/5's receipt/acknowledgment non-production of postal receipt pertaining to dispatch of Ex.P/4's registered notice is immaterial and does not affect appellant's case adversely.

**14.** Learned counsel on behalf of respondent/accused, after referring to Ex.D/1, submits that on the date of issuance of Ex.P/1's cheque no rent was due.

Therefore, it cannot be said that Ex.P/1's cheque was issued for discharge of any liability. Ex.D/5's document is dated 30.06.1995 and therein it is mentioned that:-

> " .....इस मकान के कब्जे के एवज में मैने इनका अब तक का पूरा किराया इनकी इच्छानुसार माफ किया । ....."

**15**. From aforesaid, it cannot be inferred that on 30.6.1995 no rent was due. Further, Ex.P/5's cheque has been issued on 11.10.1993. Hence, in view of aforesaid, it cannot be said that on 11.10.1993, no rent was due. Therefore, it cannot be said that Ex.P/1's has not been issued for discharge of any debt or liability.

**16**. Thus, in the instant case, ingredients constituting offence under Section 138 of NI Act clearly stands established.

**17**. In view of discussion in the foregoing paras, in this Court's considered opinion, learned trial Court has materially erred in dismissing appellant/complainant's complaint and has wrongly acquitted respondent/accused of offence under Section 138 of NI Act. Hence, impugned judgment based by trial Court is set aside and respondent/accused is convicted for offence under Section 138 of NI Act.

**18.** So as far as sentence under Section 138 of NI Act is concerned, present case pertains to Ex.P/1's cheque (dated 11.10.1993) of an amount of Rs.14,400/-. Having regard to overall facts of the case, respondent/accused is sentenced under Section 138 of NI Act with fine to the extent of double of the amount of Ex.P/1's cheque i.e. Rs.28,800/- with default stipulation of

imprisonment of RI of three months. Out of the aforesaid fine amount, a sum of Rs.25,000/- be given to appellant/complainant as compensation.

**19**. Copy of judgment along with record of the case be sent forthwith to concerned trial Court for information and necessary action.

**20**. Appeal filed by the appellant/complainant is allowed and disposed off accordingly.

**(ACHAL KUMAR PALIWAL)**
**JUDGE**

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