Neelesh Kumar alias Neelesh Jain Vs Janardhana

Court: Karnataka High Court

Date of Decision: July 21, 2004

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 482
Negotiable Instruments Act, 1881 (NI) â€" Section 138

Citation: (2005) 2 BC 223 : (2004) ILR (Kar) 5112 : (2004) 6 KarLJ 318 : (2004) 4 KCCR 2335

Hon'ble Judges: S.B. Majage, J

Bench: Single Bench

Advocate: R.B. Deshpande, for the Appellant; G.S. Balagangadhar, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S.B. Majage, J.
It is the case of the petitioner-accused that there was no service of demand notice on him and as such, the complaint is not

maintainable and consequently, the proceedings initiated on the complaint require to be quashed. On the other hand, it is the case of the

respondent-complainant that though the legal notice sent through RPAD was returned with an endorsement as ""no such addressee"", the demand

notice sent under certificate of posting was duly served on the petitioner-accused and thereafter petitioner-accused had personally approached

seeking sometime telling that he is in difficulties and hence, the complaint is maintainable.

2. It is trite that giving notice in writing, demanding the cheque amount after cheque is returned dishonoured, is a must as per proviso (b) to Section

138 of Negotiable Instruments Act, 1881. In this case; there is no dispute about giving such a notice. What is in dispute is, whether or not, there

was service of such notice on the petitioner-accused.

3. It was vehemently argued for the petitioner-accused that simply because notice was sent under certificate of posting, it cannot be taken that

petitioner was served with that notice and as such, proceedings require to be quashed u/s 482 of the Cr. P.C. On the other hand, it was submitted

for the respondent-complainant that in view of the facts of the case, it can be held that there was deemed service of notice and, at any rate, it is a

factual aspect, which requires to be considered and decided when parties adduce evidence during trial and as such, at this stage, proceedings

cannot be quashed u/s 482 of the Cr. P.C.

4. At the outset, it may be noted that 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''. So, when payee sends/dispatches demand notice, his part is over and the next depends on what the

sendee does. If a strict interpretation is given that the drawer should have actually received the notice, 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. So, the

Court should not adopt an interpretation which helps a dishonest evader and clips an honest payee as that would defeat the very legislative

measure

5. It is true that in the case of K. Narasimhiah Vs. H.C. Singri Gowda, , relied on for the petitioner-accused, the Supreme Court has held that

when there is legal duty cast on any person under law to give notice, merely showing that such a notice was despatched to the address of the

person, to whom it has to be given, giving such a notice is not complete under law. But, it was in the context of giving notice of no confidence

motion moved under Karnataka Municipalities Act, 1964. So also, while considering manner of service as per Section 21(l)(a) of the Karnataka

Rent Control Act, 1961, it was held by this Court in the case of Chandrappa Vs. Subramanya, , relied on for the petitioner that, when notice was

sent under certificate of posting, it evidences the fact of posting of a postal article and not the fact of delivery of postal article to the addressee even

though address given on the postal article is correct. Similarly, in the case of Ramanna Vs. T. Jayaprakash, , arising out of Section 138 of the

Negotiable Instruments Act, while considering a notice sent under certificate of posting, a learned Single Judge of this Court has held that certificate

of posting merely evidences fact of posting and not the factum of delivery and is not a proof of service of notice.

6. But, in the case of K. Bhaskaran v. Sankaran Vaidhyan Balan and Anr. ILR 2000 Kar. 2726 (DB), relied on for respondent arising u/s 138 of

Negotiable Instruments Act, 1881, the Supreme Court has held that when a notice is returned by the sendee as unclaimed, such date would be the

commencing date in reckoning the period of 15 days provided under the proviso (b) to Section 138 of Negotiable Instruments Act, 1881. In this

context, the Supreme Court has observed as under:

23. Here the notice is returned as unclaimed and not as refused. Will there be any significant difference between the two so far as the presumption

of service is concerned? In this connection a reference to Section 27 of the General Clauses Act, 1897 will be useful. The Section reads thus:

27. Meaning of service by post.-Where any Central Act or Regulation made after the commencement of this Act authorises 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, prepaying 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"".

24. No doubt Section 138 of the Act does not require that the notice should be given only by ""post"". Nonetheless the principle incorporated in

Section 27 (quoted above) can profitably be imported in a case where the sender has despatched the notice by post with the correct address

written on it. Then it can be deemed to have been served on the sendee unless he proves that it was not really served and that he was not

responsible for such non-service. Any other interpretation can lead to a very-tenuous position as the drawer of the cheque who is liable to pay the

amount would resort to the strategy of subterfuge by successfully avoiding the notice"".

7. So, in the case of A. Sathyanarayana Vs. C. Nagaraj, , this Court has held that when notice of a dishonoured cheque was sent by registered

post to the drawee of the cheque on the address given by the drawee, but returned with an endorsement as ""not found"" on all 7 days when taken

for service, drawing presumption of deemed service by the Trial Court was taken as proper. Same is the view taken by Andhra Pradesh High

Court in the case of Aparna Agencies, Hyderabad Vs. P. Sudhakar Rao and another, , arising u/s 138 of the Negotiable Instruments Act.

8. Similarly, in the case of State of Madhya Pradesh v. Hiralal and Ors.3, the Supreme Court has held that, even in respect of endorsements ""not

available in the house"", ""house locked"" and ""shop closed"", the notice must be deemed to have been served. So also, in the case of Fakirappa Vs.

Shiddalingappa and Another, , arising u/s 138 of Negotiable Instruments Act, where the postal endorsement was ""left, not known"", this Court has

observed that whether service of notice should be deemed to be sufficient or not should be considered only after the evidence is led and not at the

initial stage and declined to quash the proceedings on the ground of want of service of notice on the drawee.

9. In the case on hand, according to the respondent-complainant, the legal notice sent under RPAD was returned with an endorsement as ""no such

addressee"", but the notice sent under certificate of posting was duly served on the petitioner-accused. Not only that, according to him, after service

of notice, the petitioner-accused personally approached requesting for sometime to make payment telling that he is in difficulties.

10. In my opinion, when the payee asserts or pleads service of notice or relies on the presumption of deemed service of notice and the drawer of

the cheque denies service of demand notice on him, it is a matter to be decided or proved after evidence is led and not at this stage. So, it is not a

case, where the proceedings could be quashed u/s 482 of the Cr. P.C. This is because, on a disputed question of fact, proceedings cannot be

quashed. It is trite that proceedings could be quashed when no offence is made out even if the allegations made in. the complaint are taken as

correct on their face value, otherwise not. Thus, the only ground urged for the petitioner-accused is not sufficient to quash the proceeding at its

threshold and consequently, is not a case to invoke Section 482 of the Cr. P.C.