

**(1999) 07 AP CK 0028**

**Andhra Pradesh High Court**

**Case No:** Criminal Appeal No. 1333 of 1998

M/s Aparana Agencies

APPELLANT

Vs

P. Sudhakar Rao

RESPONDENT

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**Date of Decision:** July 18, 1999

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 251
- Negotiable Instruments Act, 1881 (NI) - Section 138

**Hon'ble Judges:** V. Bhaskara Rao, J

**Bench:** Single Bench

**Advocate:** M.R. Reddy, for the Appellant; N. Ashok Kumar for the Respondent No. 1 and Public Prosecutor for the Respondent No. 2, for the Respondent

**Final Decision:** Allowed

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**Judgement**

@JUDGMENTTAG-ORDER

V. Bhaskara Rao, J.

This is an appeal against acquittal filed by the complainant in C.C. No. 100 of 1997 on the file of XVI Metropolitan Magistrate. Hyderabad, dated 23.3.1998. The parties will be referred to as complainant and accused.

2. The complainant is a dealer in steel scrap for re-rolling, melting and M.S. Flats, angles. TOR Steel etc. He supplied the iron and steel items of various specifications as required by the accused and raised various bills. The accused paid a sum of Rs. 12.94,000/- as part payment, the last payment of Rs. 3 lakhs being on 14.12.1996. The accused was due to the complainant a sum of Rs. 1,51,875.25 ps, as on 15.12.1996. He issued a cheque bearing No. 646517 dated 1.1.1997 for the said amount drawn on State bank of Hyderabad. Kavadiguda Branch, Secunderabad. When it was presented in the bank it was returned dishonoured with an endorsement "insufficient funds". It was brought to the notice of the accused and at his request, the complaint represented the cheque once again in his bank on

3.1.1997 but it was returned once again with the same endorsement on 7.1.1997. Thereupon the complainant got a legal notice issued on 17.1.1997 which was returned unnerved on 17.2.1997 with an endorsement addressee out of station-door locked for 7 days. According to the complainant the notice is deemed to have been duly served on the accused. Thus, he has failed to make payment in spite of demand made by the complainant and thereupon he has committed an offence u/s 138 of Negotiable Instruments Act:

3. The learned Magistrate recorded the sworn statement of the complainant and took cognizance of the case u/s 138 of Negotiable Instruments Act and issued process to the accused. He entered appearance and received copies of the complaint and documents. When he was examined u/s 251 Cr. P.C. he denied the complainant allegations and pleaded not guilty, thereupon the complainant examined himself as P.W. 1 and another witness as P.W. 2. Exs. P-1 to P-26 have been marked for the complainant. The accused got Exs. D-1 to D-2 marked. The learned Magistrate scrutinized the above oral and documentary evidence and considered the contentions of both sides. On behalf of the accused it was firstly contended that the cheque was issued by the firm, but the firm is not arraigned as an accused and secondly that no notice is received by him.

4. The learned Magistrate held on first objection that it is not necessary to arraign the firm. However, he upheld the second objection and held that the accused is not guilty and acquitted him. Hence the appeal by the complainant

5. Sri M. Ramachandra Reddy learned Counsel for the appellant contended that the complainant has complied with the requirement of issuing notice and that the finding of the learned Magistrate in that regard is erroneous According to him the accused had knowledge of the bouncing of cheque and it was at his request that the complainant represented the cheque and thereafter it was bounced once again. He asserted that the registered notice which was returned by postal authorities that the addressee was absent is deemed service. He relied on the Judgment in V. Satyanarayana v. A.P. Travel and Tourism Dev. Corporation Ltd. Secunderabad and another. 1997 (2) ALT(Cri.) 1 (A.P.): M. Ramachandra Reddy v. G. Ram Reddy 1997(2) ALT (Cri.) 347 (A.P.): [M/s. Madan and Co. Vs. Wazir Jaivir Chand](#), . [Omer Bin Salam Askari Vs. Dr. Yousuf](#), [M/s. Attabira Regulated Market Committee Vs. M/s. Ganesh Rice Mills](#), . Thus he sought for allowing the appeal and to set aside the Judgment under appeal and to remand the case for fresh disposal.

6. Sri Ashok Kumar, learned Counsel for the accused while supporting the judgment contended that prior notice is a sine-e-quinoa for a prosecution u/s 138 of Negotiable Instruments Act and in this case no such notice was received by the accused and hence the complaint was rightly thrown out and relied on a Judgment in A. Sudershan v. Mannen (Shabir) and another 1997 (1) ALT (Cri.) 785 (A.P.).

7. Having regard to the rival contentions, the short point that arises for consideration is whether notice sent by registered post and returned by postal authorities is deemed service.

8. I applied my anxious consideration to the rival contentions. It is not in dispute that the complainant sent a notice by registered post and it was resumed after one month with the endorsement that addressee out of station and door locked for seven days. The registered cover is marked as Ex. P-4.1 carefully perused Ex. P-4 and 1 find that the address therein tallies with the address noted in Exs. P-6 to P-17 cash/credit bills. It also contains various dates indicating that the postman had visited the house on all those dates. Ultimately the cover had been returned with the aforesaid endorsement. It is not the case of the respondent/accused that a wrong address was given in Ex. P-4. Sri M. Ramchandra Reddy placed strong reliance upon section 27 of the General Clauses Act and argued that Ex. P-4 is properly addressed, prepaid and posted by registered post as it is evident from a perusal of the document itself and contended that u/s 27 it amounts to deemed service. Section 27 is reproduced below for ready reference:-

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 provided, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

It is true that the language of the above provision is plain. Evidently three requirements are to be fulfilled for presuming deemed service, viz. (1) properly addressing. (2) pre-paying and (3) posting of registered post. The above provision has been interpreted by the Apex Court in the Judgment cited supra. Para 6 of the Judgment runs as under:-

.....The proviso insists that before any amount of rent can be said to be in arrears, a notice has to be served through post. All that a landlord can do to comply with this provision is to post a prepaid registered letter (acknowledgement due or otherwise) containing the tenant's correct address. Once he does this and the letter is delivered to the post office, he has no control over it. It is then presumed to have been delivered to the addressee u/s 27 of the General Clauses Act.

On another occasion the Supreme Court in the Judgment cited supra considered the effect of a notice sent by Registered Post Acknowledgment Due but neither acknowledgement nor unopened envelope received back and in such circumstances the notice is held to be deemed service within the meaning of Order V. Rule 19-A of CPC. Section 27 of the General Clauses Act and Section 114(e) of Evidence Act.

9. This question was considered by our High Court in several judgments. In the Judgment cited supra, my learned brother B. Sudarshan Reddy. J., referred to the above Judgments of the Apex Court besides the judgment in [Indian Bank Vs. Datla Venkata Chinna Krishnam Raju](#), and held-

In my considered opinion, if the holder or the payee of a cheque makes a demand for payment by giving a notice, in writing to the drawer of the cheque under Registered Post Acknowledgement Due and if neither the unopened postal cover nor the acknowledgement is received by the payee or the holder of the cheque, a presumption would arise about the service of notice upon the drawer of the cheque.

In the Judgment cited supra, the contention that if a notice is sent on a proper address even if it is returned on the ground that the addressee was not found on the said address, it will be deemed to have been served on the addressee has been affirmed. In the Judgment cited supra this Court considered the case of the notice being addressed to the correct address and sent by registered post and the postal authorities endorsing that the addressee is at present residing at Gangalakurru Agraharam and then the notice was redirected to that address and there the postal authorities endorsed that neither the addressee nor the care/of are residing at that address and returned to send or it has been held that notice was not sent to wrong address and accordingly the contention of the petitioner was repelled and impliedly notice was deemed to have been served.

10. The learned Counsel for the appellant also relied on the judgment in [Shashi Kumar Vs. Dharam Pal Sharma and Another](#), , and contended that even a notice sent under certificate of posting is presumed to be service of notice and hence the case on hand is on a better footing inasmuch as notice was sent by registered post to the correct address and therefore, a presumption u/s 27 of the General Clauses Act and Section 114(e) of Evidence Act should be drawn in favour of the appellant.

11. On the other hand Sri Ashok Kumar, learned counsel for the respondent relying upon the Judgment cited supra, strenuously argued that Ex. P-4 registered cover was returned as the addressee was not available and in such circumstances the presumption either u/s 27 of General Clauses Act or u/s 114(e) of Evidence Act cannot be raised.

12. I carefully perused all the above Judgment and also the Judgments and also the Judgment rendered by another learned single Judge Justice B.S. Raikote. Its true that in the above case registered notice was returned on account of non-availability of the addressee continuously for seven days. The learned Judge distinguished a case of a registered cover not being returned back from a case of returned with endorsement that addressee was not available and according to him a presumption u/s 27 of the General Clauses Act and Section 114(e) of Evidence Act can be raised in former cases and not in the latter cases. After extracting Section 27 of the General Clauses Act. the learned Judge held:-

From the reading of the above Section it is clear that any document under Central Act is required to be served by post, such a service shall be effected by delivering the same in the ordinary course of post. It further makes it clear that unless different intention appears as per an Act or Regulation, such a service shall be deemed to be effected by properly addressing pre-paying and posting by a registered post. In other words if such a document is sent by registered post and if it does not return back it is deemed to have been served (emphasis supplied). But such a presumption is a refutable presumption and it is always open to the addressee to prove that in fact he did not receive such a registered post. It is only having regard to this kind of presumption found u/s 27 of the General Clauses Act, 1897 and also similar presumption found u/s 114 of the Indian Evidence Act the Courts in India have presumed the service of such a notice or document when such a registered post is not returned back. Such a presumption is raised even in case the registered post is returned with postal mark "refused" in view of the fact that such a refusal presumes knowledge of the addressee and presumably knowing the contents he has wantonly refused it.

I read the relevant provisions viz., Section 27 of the General Clauses Act and Section 114(c) of Evidence Act again and again with a view to see whether the interpretation in the underlined sentence is possible or not. In my considered opinion the qualification that "if the registered cover does not return back" is not at all contemplated by the above provisions. The plain meaning of the above provision is that service shall be deemed to be effected by (1) properly addressing; (2) pre-paying and (3) posting by registered post. These are the 3 requirements for invoking Section 27 of the General Clauses Act and nothing more. There is no requirement of that cover not returning back for raising a presumption. It is seen that the Judgments of the Apex Court cited supra, are not brought to the notice of the learned Judge especially the Judgment cited supra, wherein the registered cover was in fact returned and yet the presumption of deemed service was raised. I am sure that if the above authorities were brought to the notice of the Hon'ble Judge, his view" would have been different. Hence, with all respect hold that the above judgment is per incuriam.

13. On a careful consideration of the authorities cited supra, I have no hesitation to hold that the requirements for raising a presumption of deemed service are made out by the appellant and hence, the view of the trial Court on this point is clearly unsustainable. The point is answered accordingly.

14. It is evident from the judgment under appeal that the only ground on which the respondent was acquitted was on the ground of non-service of mandatory notice u/s 138 of the Negotiable Instruments Act and such a finding is set aside. Accordingly the order of acquittal on the ground is also set aside. However, I am of the view that the matter requires re-assessment of evidence by the trial Court.

15. In the result, the appeal is allowed and the Judgment dated 23.3.1998 is set aside and the matter is remanded to the trial Court for fresh disposal according to law. This being an old case, the trial Court is directed to dispose of the same as expeditiously as possible preferably within two (02) months from the date of receipt of records.