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IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE HIMANSHU JOSHI

ON THE 26th OF FEBRUARY, 2026MISC. CRIMINAL CASE No. 11427 of 2023*VINAY KUMAR MISHRA**Versus**ADITYA NAYAK*

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Appearance:

Shri Prateek Dubey - Advocate for the applicant.

Shri Sudhakar Singh - Advocate for respondent.

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ORDER

The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 assailing the order dated 08.02.2023 passed by the learned 4th Upper Sessions Judge, Satna in CRR No. 54/2022, whereby the revisional Court affirmed the order dated 01.07.2022 passed by the learned JMFC, Satna in unregistered Complaint Case No. 824/2020, dismissing the complaint filed by the petitioner under Section 138 of the Negotiable Instruments Act, 1881 on the ground that the complaint was premature due to non-disclosure of the service report of the statutory notice.

2. Brief facts of the case are that the petitioner and the respondent are residents of District Satna (M.P.) and are known to each other due to their long-standing family relationship. Owing to financial necessity, the respondent borrowed a sum of Rs. 5,00,000/- from the petitioner on different dates i.e., 19.07.2019 and 02.08.2019. In discharge of the aforesaid liability,



the respondent initially issued two cheques of Rs. 2,00,000/- and Rs. 3,00,000/-, which were dishonoured due to insufficient funds. Thereafter, the respondent issued another cheque bearing No. 509517 dated 18.10.2019 for Rs. 5,00,000/-, which was also dishonoured. Subsequently, the respondent took back the earlier cheque and issued a fresh cheque bearing No. 034987 dated 20.07.2020 drawn on Allahabad Bank for Rs. 5,00,000/-. The said cheque, when presented, was again dishonoured on 27.07.2020 due to insufficient funds. The petitioner then issued a statutory legal notice dated 11.08.2020, sent on 12.08.2020 by registered post demanding payment of the cheque amount within the prescribed period. Since the respondent failed to make the payment within 15 days, the petitioner filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 on 01.09.2020.

3. During the proceedings before the learned JMFC, the Court directed the petitioner to produce the track report regarding service of the notice. According to petitioner, due to the circumstances arising from the COVID-19 pandemic and nationwide lockdown, the petitioner could not obtain the track report despite efforts and filed an affidavit stating that the notice had been served. However, the learned JMFC dismissed the complaint on 01.07.2022, holding that the petitioner failed to disclose the date of service of notice upon the respondent and therefore the limitation period under Section 138 of the Negotiable Instruments Act could not be calculated.

4. The petitioner preferred a revision before the Sessions Court, which was dismissed by order dated 08.02.2023 relying upon the decisions in *Ajeet Seeds Ltd. vs. K. Gopala Krishnaiah* {(2014) 12 SCC 685} and *C.C. Alavi*



Haji vs. Palapetty Muhammed {(2007) 6 SCC 555}, holding that presumption of service could be drawn after 30 days from dispatch of the notice.

5. Learned counsel for the applicant submits that after the dishonour of the cheque dated 20.07.2020, the petitioner issued a statutory legal notice dated 11.08.2020, which was sent on 12.08.2020 through registered post on the correct address of the respondent demanding payment of the cheque amount within the prescribed period. Despite service of the notice, the respondent failed to make payment and therefore the petitioner filed a complaint under Section 138 of the Negotiable Instruments Act before the learned JMFC, Satna. It is contended that the learned JMFC dismissed the complaint only on the ground that the petitioner failed to produce the track report to show the exact date of service of the notice upon the respondent. It is submitted that the Courts below failed to appreciate the provisions of Section 27 of the General Clauses Act, 1897, which clearly provide that once a notice is properly addressed, prepaid and sent by registered post, the service of the notice shall be deemed to have been effected in the ordinary course of postal business, unless the contrary is proved. Learned counsel submits that the Courts below also failed to consider that during the relevant period the entire country was facing the COVID-19 pandemic, due to which the petitioner could not obtain the track report despite best efforts and therefore filed an affidavit stating that the notice had been served upon the respondent. It is further argued that the revisional Court has wrongly interpreted the judgment of the Hon'ble Supreme Court in Ajeet Seeds Ltd. (supra) and



erroneously held that presumption of service can be drawn only after 30 days from the date of dispatch of notice, whereas no such rigid guideline has been laid down by the Hon'ble Supreme Court. Hence it is prayed that the orders passed by both the Courts below be set aside. He further submitted that the complaint under Section 138 of the Negotiable Instruments Act should not be dismissed at the threshold on technical grounds relating to limitation and the Magistrate may wait before taking cognizance if required. He has also placed reliance on the decisions in *Ajeet Seeds Ltd.(supra); Dheeraj Singh v. Sardar Singh & Another, reported in 2008 (1) MPWN 35;* and *Hemant Sharma v. Kishori Lal Vanshkar, reported in 2008 (3) MPWN 14.*

6. Per contra, learned counsel for the respondent opposed the prayer and submits that the orders passed by the both the Court below are just and proper and do not require any interference. It is submitted that compliance with the statutory requirements contained in Section 138 of the Negotiable Instruments Act is mandatory. One of the essential ingredients of the offence is that the drawer of the cheque must receive a demand notice and fail to make payment within 15 days from the date of receipt of such notice. Learned counsel submits that in the present case the petitioner failed to disclose the date of service of the legal notice dated 11.08.2020 upon the respondent. The petitioner also failed to produce any postal acknowledgment or track report to establish that the notice was actually served upon the respondent. It is further argued that in the absence of proof of service of notice, the Courts below rightly held that it was not possible to compute the limitation period for filing the complaint under Section 138 of the Negotiable



Instruments Act and therefore the complaint was rightly dismissed as premature. He prays for dismissal of this petition.

7. Heard the submissions and perused the record.

8. The question which arises for consideration is whether the complaint filed by the petitioner could have been dismissed solely on the ground that the track report regarding service of notice was not produced, despite the notice having been sent by registered post on the correct address of the respondent. At this stage, it is apposite to refer to Section 27 of the General Clauses Act, 1897, which reads as follows:

“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.”

9. The aforesaid provision creates a statutory presumption of service when a notice is properly addressed, prepaid and dispatched by registered post.

10. The Hon’ble Supreme Court in *C.C. Alavi Haji (supra)* has held that once notice is sent by registered post to the correct address of the drawer, the presumption of service arises and the burden shifts upon the accused to rebut the same.

11. Similarly, in *Ajeet Seeds Ltd. (supra)*, the Supreme Court reiterated the principle regarding presumption of service under Section 27 of



the General Clauses Act. However, this Court finds that neither of the aforesaid judgments lays down that presumption of service can arise only after 30 days from dispatch of the notice. The presumption operates on the basis of the ordinary course of postal business, which ordinarily would be a few days depending upon the distance and mode of dispatch.

12. Therefore, the revisional Court erred in interpreting the aforesaid judgments as mandating a fixed period of 30 days for drawing presumption of service.

13. In view of the aforesaid settled principles of law, this Court is of the considered opinion that non-production of the service report or track report by itself cannot be a ground to dismiss a complaint under Section 138 of the Negotiable Instruments Act at the threshold, particularly when the complainant has asserted that the notice was duly dispatched on the correct address of the accused. The question whether the notice was actually served or not is essentially a matter of evidence, which can appropriately be examined during trial and the accused is always at liberty to rebut the statutory presumption of service. Therefore, the learned Magistrate ought not to have dismissed the complaint at the threshold merely on the ground that the acknowledgment or track report was not produced. The revisional Court also erred in presuming the fixed period of 30 days for drawing presumption of service.

13. In order to avoid similar situations in future, this Court deems it appropriate to clarify the following guideline:

1. Where a statutory notice under Section 138 of the



Negotiable Instruments Act is sent by registered post or speed post on the correct address of the drawer, a presumption of service under Section 27 of the General Clauses Act, 1897 shall ordinarily arise.

2. The Magistrate shall not dismiss the complaint solely on the ground that the track report or acknowledgment due card has not been filed, if the complainant demonstrates that the notice was properly addressed, prepaid and dispatched. In such cases, the Court may presume that the notice would have been delivered within the ordinary course of postal business, unless the accused rebuts such presumption.

3. Where the notice is sent by registered post or speed post to an address within the same city or district, the Court may ordinarily presume service within 3 to 5 days from the date of dispatch.

4. Where the notice is sent to an address located in another district but within the same State, the Court may ordinarily presume service within 5 to 7 days from the date of dispatch.

5. Where the notice is sent to an address located in another State, the Court may ordinarily presume service within 7 to 10 days from the date of dispatch.

6. If the address is located in a remote or rural area, the



Court may allow a reasonable additional time depending upon the ordinary postal transit period.

7. The above presumption shall remain rebuttable, and the accused shall always have the liberty to establish, by leading evidence, that the notice was not actually received. The question of actual service and rebuttal of presumption can appropriately be examined during trial, and the complaint should not be rejected at the threshold.

14. In the present case, the petitioner has clearly pleaded and placed on record that the statutory notice dated 11.08.2020 was sent on 12.08.2020 by registered post. The notice was addressed to the correct address of the respondent, which had earlier been used for correspondence. The respondent had earlier replied to a notice sent on the same address. The inability to produce the track report was due to circumstances arising during the COVID-19 pandemic.

15. In such circumstances, dismissal of the complaint at the threshold merely because the track report was not produced defeats the object of Section 138 of the Negotiable Instruments Act, which is intended to ensure credibility of commercial transactions.

16. Since, in the present case the statutory notice dated 11.08.2020 was dispatched by registered post on 12.08.2020 to the respondent on his correct address and it is not disputed that both the petitioner as well as the respondent are residents of Satna, and the notice was sent within the same district even more same city, therefore, In view of the guideline framed by



this Court regarding presumption of service in accordance with Section 27 of the General Clauses Act, 1897, where the notice is sent within the same city or district, the delivery can ordinarily be presumed within three days from the date of dispatch in the normal course of postal business.

17. Accordingly, since the notice was dispatched on 12.08.2020, the service of notice upon the respondent can reasonably be presumed to have been effected on or about 15.08.2020. Thereafter, the statutory period of 15 days as contemplated under Section 138 of the Negotiable Instruments Act, 1881 would begin to run from the date of presumed service. Thus, the cause of action to file the complaint would arise after expiry of the said 15 days. In the present case, the petitioner filed the complaint on 01.09.2020, which falls after the expiry of the statutory waiting period calculated from the presumed date of service. Therefore, the complaint cannot be said to be premature, and the Courts below committed an error in dismissing the complaint on this ground.

18. In view of the above discussion, this Court is of the considered opinion that both the Courts below have committed an error in dismissing the complaint filed by the petitioner. Accordingly, the petition filed under Section 482 CrPC is allowed. The order dated 08.02.2023 passed by the learned 4th Upper Sessions Judge, Satna in CRR No. 54/2022, as well as the order dated 01.07.2022 passed by the learned JMFC, Satna in Complaint Case No. 824/2020, are hereby set aside. The complaint filed by the petitioner under Section 138 of the Negotiable Instruments Act is restored to its original number. The learned JMFC, Satna shall proceed with the matter



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in accordance with law and decide the same on merits. However, It is made clear that this Court has not expressed any opinion on the merits of the case.

19. With the aforesaid observation, this petition is **allowed**.

(HIMANSHU JOSHI)
JUDGE

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