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IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

AHSANUDDIN AMANULLAH; J., MANMOHAN; J.

SLP (CRL.) NO.17180 OF 2025; September 30, 2026

SAINABA *versus* **STATE OF KERALA & ANR.**

Negotiable Instruments Act, 1881 — Section 138 Proviso (b) read with Section 27, General Clauses Act, 1897 and Section 114, Indian Evidence Act, 1872 — Statutory Demand Notice sent by registered post to the correct address of the drawer — Receipt of notice by mother of the drawer — Rebuttable presumption of valid service — Burden of proof - The requirement of "giving of notice" under Proviso (b) to Section 138 of the Negotiable Instruments Act, 1881 stands complied with once the statutory demand notice is dispatched by registered post to the correct address of the drawer - It is not incumbent upon the complainant to prove that the notice was personally served upon or received by the drawer, nor is the complainant required to plead or prove that the drawer had actual knowledge or deliberately avoided service - The dispatch of notice to the correct address gives rise to a statutory presumption of due service under Section 27 of the General Clauses Act, 1897 and Section 114 of the Indian Evidence Act, 1872 - The burden shifts squarely onto the drawer to rebut this presumption by proving that the address was incorrect, that the letter was never tendered, that the postal endorsement was false, or that they had no knowledge of its arrival - Where the notice was delivered at the drawer's admitted residential address and received by the drawer's mother who resided with them, and the drawer failed to dispute the correctness of the address (having entered appearance pursuant to summons issued at the identical address), the presumption of due service remained unrebutted - The High Court erred in reversing concurrent findings of conviction by shifting the burden onto the complainant to show that the drawer was personally aware of the receipt of notice by his mother. *[Relied on C.C. Alavi Haji v. Palapetty Muhammed, (2007) 6 SCC 555; D. Vinod Shivappa v. Nanda Belliappa, (2006) 6 SCC 456; K. Bhaskaran v. Sankaran Vaidhyan Balan & Anr., (1999) 7 SCC 510; Paras 10–13, 18–24, 31–35]*

Code of Criminal Procedure, 1973 — Section 397 — Scope of revisional jurisdiction — Interference with concurrent findings of fact - A revisional court exercising jurisdiction under Section 397 of the CrPC does not sit as a second court of appeal - It is not entitled to re-appreciate the entire evidence and substitute its own subjective view for concurrent findings of fact meticulously arrived at by the Trial Court and confirmed by the Sessions Court, unless such findings are perverse, based on no evidence, or suffer from patent illegality - The High Court's interference with concurrent findings of guilt under Section 138 on the erroneous assumption that service on the mother did not constitute service on the accused was wholly impermissible in law. *[Paras 9, 15, 33–36]*

[Arising out of impugned final judgment and order dated 29-07-2025 in CRLRP No. 865/2023 passed by the High Court of Kerala at Ernakulam]

For Petitioner(s) :Mr. Tom Joseph- 2953, AoR Mr. Johnson Varikkappalli, Adv. Mr. Linto K.b., Adv.

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For Respondent(s) : Mr. Nishe Rajen Shonker- 1698, AoR

J U D G M E N T

MANMOHAN, J.

1. Leave granted.

2. Present appeal has been filed challenging the judgment and order dated 29th July 2025 passed by the Kerala High Court in Crl. R.P. No. 865 of 2023, whereby the concurrent findings of the Trial Court and the Appellate Court convicting and sentencing respondent No.2 under Section 138 of the Negotiable Instruments Act, 1881 ("the Act, 1881"), were set aside on the ground of non-compliance of proviso (b) to Section 138 of the Act, 1881 inasmuch as the statutory demand notice had not been served upon respondent No.2, but was served upon the mother of respondent No.2.

3. A perusal of the paper book shows that notice in the present matter was issued on 10th November 2025 and the same was served upon respondent No.2 on 11th December 2025. Despite due service of notice, there is no appearance on behalf of respondent No.2. Consequently, this Court had no option but to proceed with hearing of the matter.

BRIEF FACTS

4. In the complaint under Section 138 of the Act 1881, it was alleged by the appellant-complainant that respondent No.2 had borrowed a sum of Rs.3,00,000/- from the appellant-complainant. Towards re-payment of the same, respondent No.2-accused had issued a cheque bearing Cheque No. 479097 drawn on the Catholic Syrian Bank, Perumbavoor Branch, which was dishonoured upon presentation.

5. The appellant-complainant issued a statutory demand notice dated 31st August 2016 through registered post at the correct address of respondent No.2, which was received by his mother. Despite receipt of notice at his address, respondent No.2 did not make any payment or file any reply to the legal notice.

6. Thereafter, the appellant-complainant instituted the present complaint under Section 138 of the Act, 1881 being S.T. Case No. 114 of 2017. When respondent No.2 was examined under Section 313 of Code of Criminal Procedure, he stated that he had altogether borrowed Rs.7,00,000/- from the complainant but had repaid the entire amount. He further stated that he had given a blank signed cheque while borrowing Rs.3,00,000/-.

7. The Trial Court by way of its judgment dated 10th July 2019 convicted respondent No.2 under Section 138 of the Act, 1881 and sentenced him to undergo simple imprisonment for six months along with a fine of Rs.3,00,000/-, with a default stipulation of further imprisonment. The relevant portion of the Trial Court judgment with respect to service of notice is reproduced hereinunder:

"8. One of the contentions taken by the accused is that lawyer notice was not received by the accused and the same was received by one Amina. Exhibit P4 is the receipt of the lawyer notice and Ext.P5 is the acknowledgement card of the lawyer notice. On perusal of Ext.P3 lawyer notice, Ext.P5 acknowledgement card it would show that address mentioned in those documents is one and the same as mentioned in the complaint and vakalath of the accused. When the summons was issued from the

court in the same address, accused appeared before the court and contested the matter. What the provision of the Negotiable Instruments Act mandates is issue a registered demand notice to the accused. In this case complainant has issued Ext.P3 lawyer notice demanding the amount in the correct address of the accused. By sending lawyer notice in the correct address of the accused complainant has complied with the mandatory requirement under the provisions of the Negotiable Instruments Act."

8. The respondent No.2 filed Criminal Appeal No. 175 of 2019 challenging the judgment of the Trial Court, which was dismissed by Additional District & Sessions Judge by judgment dated 16th February 2023. The relevant portion of the Appellate Court judgment with respect to service of notice is reproduced hereinunder:

"11. In the instant case, perusal of the records shows that the legal demand notice was sent by the complainant on the correct address of the accused. It is to be noted that the accused has not challenged the correctness of the address in the plea of defence. It is also be noted that in reply to the question u/s 313 Cr.P.C. the accused has not taken up any contention regarding the correctness of his address. It is also to be noted that the mother of the accused has received the demand notice issued through registered post. In the above circumstance it can be safely concluded that the statutory demand notice was served to the accused."

9. Respondent No.2 filed Criminal Revision Petition No. 865 of 2023 before the High Court of Kerala at Ernakulam. By the Impugned Judgment, High Court has allowed the Criminal Revision filed by respondent No.2 on the ground that statutory demand notice under Section 138 of the Act, 1881 had not been served upon respondent No.2-accused but had been served upon mother of respondent No.2. The relevant portion of the impugned judgment is reproduced hereinbelow:

"23. …Unless there is evidence to show that the accused is aware of the notice sent by the complainant, this Court cannot conclude that notice is served to the accused. I can understand if PW1 deposed that even though notice is served to 'Amina', the accused is aware of the same, the burden shifts back to the accused to prove that he was not aware. But there is no such case to the complainant that the accused was aware of the receipt of notice by 'Amina'. It is proved beyond reasonable doubt, in the light of Ext.P5, that 'Amina' received the notice…."

ARGUMENTS ON BEHALF OF THE APPELLANT

10. Learned counsel for the appellant submitted that the impugned judgment is contrary to the judgments of this Court including ***C.C. Alavi Haji vs. Palapetty Muhammed (2007) 6 SCC 555***, ***D. Vinod Shivappa vs. Nanda Belliappa (2006) 6 SCC 456***, ***Madan & Co. vs. Wazir Jaivir Chand (1989) 1 SCC 264*** and ***Subodh S. Salaskar vs. Jayprakash M. Shah (2008) 13 SCC 689***, wherein this Court has categorically held that dispatch of a notice by registered post to the correct address of the drawer raises a presumption of due service under Section 27 of the General Clauses Act, 1897 ("the Act, 1897") and Section 114 of the Indian Evidence Act, 1872 ("the Act, 1872").

11. He emphasised that once the notice is sent by registered post to the correct address of the drawer, it is not for the complainant to prove its receipt by the addressee-drawer.

12. He stated that in the present case, the notice had been dispatched to the correct address of respondent No.2 but the same was received by his mother who resided with respondent No.2. He pointed out the respondent No.2 never challenged the correctness of the address, instead, he appeared before the Court pursuant to summons served at

the very same address.

13. He contended that respondent No.2 had failed to rebut the presumption of due service and that the receipt of notice by mother at his correct residential address is not a valid rebuttal.

14. According to him, the reasoning adopted by the High Court has the effect of reducing the efficacy of Section 138 of the Act as it provides an unscrupulous drawer with an easy escape from liability by ensuring that notices are received by family members and not the drawer even though it may be sent to the correct address of the drawer.

15. Learned counsel for the appellant lastly submitted that the High Court acted in excess of its revisional jurisdiction under Section 397 Cr.P.C. by re appreciating the entire evidence and substituting its own view for the concurrent findings of fact meticulously recorded by the Trial Court and affirmed by the Appellate Court which is impermissible in law. He emphasised that the revisional court is not a second appellate court and cannot interfere with findings of fact unless they are perverse or based on no evidence, which is not the case here. 16. Learned counsel for the respondent-State of Kerala states that the State of Kerala is not a contesting respondent as the present matter pertains to dishonour of cheque issued by the respondent No.2 on account of insufficiency of funds.

REASONING

17. Having heard learned counsel for the appellant and having perused the paper book, this Court is of the view that the impugned judgment passed by the High Court warrants interference.

RELEVANT PROVISIONS

18. Under proviso (b) to Section 138 of the Act, 1881, it is incumbent upon the payee to make a demand for payment of the cheque amount by giving a notice in writing to the drawer of the cheque within thirty days from the date of receipt of information regarding the dishonour of the cheque. The cause of action for prosecuting the drawer arises only upon his failure to make payment within fifteen days of receipt of such notice. For ready reference, Section 138 of the Act, 1881 is reproduced hereinbelow:-

"***138. Dishonour of cheque for insufficiency, etc., of funds in the account.—*** *Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:*

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(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 thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.

19. Section 27 of the General Clauses Act, 1897 embodies the principle of presumption of service in respect of a document dispatched by registered post. Section 27 of the Act, 1897 is reproduced hereinbelow:

*"**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."*

REBUTTABLE PRESUMPTION OF VALID SERVICE

20. In ***K. Bhaskaran vs. Sankaran Vaidhyan Balan & Anr., (1999) 7 SCC 510,*** the issue before this Court was whether any cause of action arises if the notice sent by the complainant to the accused is returned as unclaimed. This Court held that '*giving of notice*' is different from '*receiving of notice*'. It was further held that where the sender has dispatched the notice by registered post to the correct address, service may be deemed to have been effected upon the sendee, unless the sendee establishes that the notice was not, in fact, served and that such non-service was not attributable to him. The relevant portion of the judgment in ***K. Bhaskaran*** (supra) is reproduced hereinbelow:

*"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.***

25. Thus, when a notice is returned by the sendee as unclaimed such date would be the commencing date in reckoning the period of 15 days contemplated in clause (c) to the proviso of Section 138 of the Act. Of course such reckoning would be without prejudice to the right of the drawer of the cheque to show that he had no knowledge that the notice was brought to his address. In the present case the accused did not even attempt to discharge the burden to rebut the aforesaid presumption."

(emphasis supplied)

21. In ***D. Vinod Shivappa*** (supra), the issue before this Court was whether in a case where postal endorsement shows that the notice could not be served due to non-availability of the addressee or premises being locked, a cause of action may

nonetheless arise for prosecution under Section 138 of the Act, 1881 on the basis of deemed service. This Court held that if every instance of non-availability were to be treated as absence of service, the very object of the statute would be defeated, since a dishonest drawer could conveniently evade service and thereby escape prosecution altogether. In arriving at this conclusion, this Court expressly approved the ratio laid down in ***K. Bhaskaran*** (supra). The relevant portion of the judgment in ***D. Vinod Shivappa*** (supra) is reproduced hereinunder:

"17. In K. Bhaskaran v. Sankaran Vaidhyan Balan [(1999) 7 SCC 510 : 1999 SCC (Cri) 1284] the drawee had presented a cheque issued by the drawer but the same was dishonoured. A notice was sent by registered post but the same was returned with the endorsement that the addressee was found absent on 3-2-1993, 4-2-1993 and 5-2-1993 and intimation was served on addressee's house on 6-2-1993. Thereafter the postal article remained unclaimed till 15-2-1993 and it was returned to the sender with a further endorsement "unclaimed". The complaint filed by the drawee was dismissed on the ground of territorial jurisdiction as also on the ground that since the notice had not been received by the drawer, there was no cause of action for filing the complaint. On appeal, the High Court reversed the order of acquittal. The appellant approached this Court by special leave. This Court held in favour of the respondent on the question of territorial jurisdiction. On the question of notice this Court considered the scheme of Section 138 of the Act by particular reference to clauses (b) and (c) of the proviso thereof. In view of the legislative scheme it was held, the failure on the part of the drawer to pay the amount should be within 15 days "of the receipt" of the said notice. It was clear that the "giving of notice" in the context was not the same as the receipt of notice. "Giving" was the process of which the "receipt" was the accomplishment. This Court then observed: (SCC p. 519, para 20)

"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 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."

18. This Court noticed the position well settled in law that the notice refused to be accepted by the drawer can be presumed to have been served on him. In that case the notice was returned as "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?" Their Lordships referred to Section 27 of the General Clauses Act and observed that the principle incorporated therein could profitably be imported in a case where the sender had dispatched 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. This Court dismissed the appeal preferred by the drawer holding that where the notice is returned by the addressee as unclaimed such date of return to the sender would be the commencing date in reckoning the period of 15 days contemplated in clause (c) of the proviso to Section 138 of the Act. This would be without prejudice to the right of the drawer of the cheque to show that he had no knowledge that the notice was brought to his address. Since the appellant did not attempt to discharge the burden to rebut the aforesaid presumption, the appeal was dismissed by this Court. ***The aforesaid decision is significant for two reasons. Firstly, it was held that the principle incorporated in Section 27 of the General Clauses Act would apply in a case where the sender dispatched the notice by post with the correct address written on it, but that would be without prejudice to the right of the drawer of the cheque to show that he had no knowledge that the notice was brought to his address.****"*

(emphasis supplied)

22. In ***C.C. Alavi Haji*** (supra), a three-Judge Bench of this Court was seized of a reference made by a Division Bench concerning the question of service of notice in terms of proviso (b) to Section 138 of the Act, 1881. The referring Division Bench had

expressed the view that in ***D. Vinod Shivappa*** (supra), this Court did not advert to the fact that the presumption under Section 114 of the Evidence Act, 1872 is a rebuttable presumption and, therefore, it was necessary for the complainant to aver that the addressee-drawer had deliberately avoided receipt of the notice or had knowledge thereof, in order to invoke such presumption.

23. The three-Judge Bench, however, affirmed the view taken in ***D. Vinod Shivappa*** (supra) and held that there is no distinction between Section 114 of the Evidence Act, 1872 and Section 27 of the General Clauses Act, 1897 both of which raise a presumption that service is effected when a notice is dispatched to the correct address by registered post. Consequently, it is unnecessary for the complainant to separately aver that the addressee deliberately avoided service. This Court further held that once the notice is correctly addressed to the drawer of the cheque, the mandatory requirement of statutory notice under proviso (b) to Section 138 of the Act, 1881 stands satisfied and it is for the drawer to rebut the presumption by demonstrating either that the notice was not sent to the correct address or that the postal endorsement is erroneous. The relevant portion of the judgment in ***C.C. Alavi Haji*** (supra) is reproduced hereinbelow:

"15. Insofar as the question of disclosure of necessary particulars with regard to the issue of notice in terms of proviso (b) of Section 138 of the Act, in order to enable the court to draw presumption or inference either under Section 27 of the GC Act or Section 114 of the Evidence Act, is concerned, there is no material difference between the two provisions. ***In our opinion, therefore, when the notice is sent by registered post by correctly addressing the drawer of the cheque, the mandatory requirement of issue of notice in terms of Clause (b) of proviso to Section 138 of the Act stands complied with.*** *It is needless to emphasise that the complaint must contain basic facts regarding the mode and manner of the issuance of notice to the drawer of the cheque. It is well settled that at the time of taking cognizance of the complaint under Section 138 of the Act, the court is required to be prima facie satisfied that a case under the said section is made out and the aforenoted mandatory statutory procedural requirements have been complied with.* ***It is then for the drawer to rebut the presumption about the service of notice and show that he had no knowledge that the notice was brought to his address or that the address mentioned on the cover was incorrect or that the letter was never tendered or that the report of the postman was incorrect.*** *In our opinion, this interpretation of the provision would effectuate the object and purpose for which proviso to Section 138 was enacted, namely, to avoid unnecessary hardship to an honest drawer of a cheque and to provide him an opportunity to make amends.*

xxx xxx xxx xxx xxx

17. It is also to be borne in mind that the requirement of giving of notice is a clear departure from the rule of criminal law, where there is no stipulation of giving of a notice before filing a complaint. Any drawer who claims that he did not receive the notice sent by post, can, within 15 days of receipt of summons from the court in respect of the complaint under Section 138 of the Act, make payment of the cheque amount and submit to the court that he had made payment within 15 days of receipt of summons (by receiving a copy of complaint with the summons) and, therefore, the complaint is liable to be rejected. A person who does not pay within 15 days of receipt of the summons from the court along with the copy of the complaint under Section 138 of the Act, cannot obviously contend that there was no proper service of notice as required under Section 138, by ignoring statutory presumption to the contrary under Section 27 of the GC Act and Section 114 of the Evidence Act. In our view, any other interpretation of the proviso would defeat the very object of the legislation. As observed in Bhaskaran case [(1999) 7 SCC 510 : 1999 SCC (Cri) 1284] if the "giving of notice" in the context of Clause (b) of the proviso was the same as the "receipt of notice" a trickster cheque drawer would get the premium to avoid receiving the notice by adopting different strategies and escape from legal consequences of

Section 138 of the Act."

(emphasis supplied)

24. Thus, it is evident that this Court has consistently held that there exists a rebuttable presumption of valid service of a statutory notice under Section 138 of the Act, 1881, where such notice is dispatched by registered post to the correct address of the drawer. Indeed, in ***C.C. Alavi Haji*** (supra), this Court categorically held that the requirement of '*giving of notice*' stands complied with once the notice is dispatched to the correct address. It is thereafter incumbent upon the drawer to rebut the presumption by establishing either that he had no knowledge of the notice having been brought to his address or that the notice was not sent to the correct address or that the postal endorsement is incorrect.

JUDGMENT IN M.D. THOMAS IS PER INCURIAM

25. Subsequently, however, a Division Bench in ***M.D. Thomas vs. P.S. Jaleel, (2009) 14 SCC 398*** without noticing the authoritative pronouncement of the larger three-Judge Bench in ***C.C. Alavi Haji*** (supra), set aside a conviction under Section 138 of the Act, 1881 solely on the ground that the statutory notice had been served upon the wife of the drawer and not upon the drawer himself without examining whether the notice was correctly addressed or whether the wife resided with the husband-drawer.

26. In ***State of U.P. v. Synthetics and Chemicals Ltd., (1991) 4 SCC 139***, this Court explained that judgments rendered *per incuriam* constitute an exception to the doctrine of *stare decisis*, since the '*quotable in law*' has been avoided or ignored. The expression '*per incuriam*' denotes a decision rendered in ignorance of a binding precedent of this Court or of a Court of coordinate or higher jurisdiction or in disregard of the terms of a statute or a rule having the force of law.

27. This Court is of the considered view that the judgment in ***M.D. Thomas*** (supra) was rendered by a coordinate Bench without reference to binding precedents of this Court on the presumption of service of notice under proviso (b) to Section 138 of the Act, 1881 and without any meaningful finding as to whether the wife-recipient was residing with the drawer-husband or whether the notice was dispatched to the correct address. Moreover, the Bench in ***M.D. Thomas*** (supra) erroneously treated the wife of the drawer as equivalent to an unrelated third party. If the notice was indeed sent to the correct address, the presumption under Section 27 of the General Clauses Act, 1897 and Section 114 of the Evidence Act, 1872 would necessarily be attracted, irrespective of the identity of the recipient.

28. Additionally, this Court is of the view that if the judgment in ***M.D. Thomas*** (supra) were to be treated as binding precedent, it would lead to anomalous consequences. By virtue of the decisions in ***K. Bhaskaran*** (supra), ***D. Vinod Shivappa*** (supra) and ***C.C. Alavi Haji*** (supra), the complainant enjoys the presumption of valid service where the notice is dispatched to the correct address but not delivered at all. However, under ***M.D. Thomas*** (supra), a complainant whose notice is actually delivered but received by a family member residing at the same address would be denied the benefit of such presumption!

29. This Court reiterates that the law requires only that the complainant dispatch the

notice to the correct address of the drawer and the presumption in his favour cannot be defeated by circumstances beyond his control. Under Section 27 of the General Clauses Act, 1897, service is deemed to be effected, once the notice is properly addressed and sent by registered post.

30. Consequently, this Court holds that the judgment in ***M.D. Thomas*** (supra) is *per incuriam* and cannot be treated as binding precedent under Article 141 of the Constitution. Furthermore, if allowed to stand as precedent, ***M.D. Thomas*** (supra) would enable unscrupulous drawers to evade liability on specious pleas, thereby frustrating the object of the statute.

PRESUMPTION OF VALID SERVICE IN THE PRESENT CASE

31. In the present case, the statutory demand notice under proviso (b) to Section 138 of the Act, 1881 was dispatched by the appellant through registered post to the correct address of respondent No.2. This is evident from the fact that respondent No.2 had entered appearance pursuant to summons delivered at the same address. The Vakalatnama filed by him also bore the same address as that mentioned in the statutory notice. Furthermore, both the appeal and revision petitions filed by respondent No.2 contained the identical address. Significantly, respondent No.2 never disputed the correctness of his address in his statement under Section 313 of the Code of Criminal Procedure. It was not even his case that his relationship with his mother was inimical or that they resided separately.

32. Therefore, once the notice was dispatched to the correct address, the presumption in terms of the judgment in ***C.C. Alavi Haji*** (supra) arose and it was incumbent upon the drawer/accused to establish either that the address was incorrect or that he had no knowledge of the notice having been brought to his address.

33. A perusal of the impugned judgment reveals that it rests upon a complete misreading of the decision of this Court in ***C.C. Alavi Haji*** (supra). In paragraph 14 of the impugned judgment, the High Court has erroneously observed, "*...In C.C. Alavi Haji's case (supra), the Apex Court observed that 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*..." Likewise, in paragraph 23 of the impugned judgment, the High Court further erred in holding, "*...Unless there is evidence to show that the accused is aware of the notice sent by the complainant, this Court cannot conclude that notice is served to the accused....*"

34. Thus, the High Court in the impugned Judgment wrongly shifted the burden from the accused-drawer to the complainant, contrary to the settled law laid down in ***C.C. Alavi Haji*** (supra). Moreover, the High Court failed to consider the overwhelming material on record which conclusively establishes that the notice was delivered at the correct address of respondent No.2.

35. This Court is of the considered view that once the notice was dispatched to the correct address of respondent No.2, the statutory requirement of '*giving of notice*' under proviso (b) to Section 138 of the Act, 1881 stood satisfied. Since respondent No.2 failed to prove either that the address was incorrect or that he was unaware of the notice

being delivered to his address or that his relationship with his mother was inimical, the presumption remained unrebutted. The High Court erred in reversing the concurrent findings of the Trial Court solely on the ground that the notice was not personally delivered to respondent No.2.

CONCLUSION

36. Consequently, the present appeal is allowed and the impugned judgment of the High Court is set aside. The judgement passed by the Trial Court sentencing respondent No.2 to undergo simple imprisonment for six months and to pay a fine of Rs.3,00,000/-, with a default stipulation of further imprisonment stands restored.

37. Accordingly, the present appeal is disposed of. Pending application(s), if any, stands disposed of.

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