

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.1325 OF 2019
(Arising out of SLP(Cr1.) No(s).137/2019)

KISHORE SHARMA

APPELLANT(S)

VERSUS

SACHIN DUBEY

RESPONDENT(S)

WITH

CRIMINAL APPEAL NO.1326 OF 2019
(Arising out of SLP(Cr1.) No(s).166/2019)

O R D E R

Cr1.A. @ SLP(Cr1.) No(s).137/2019

1. Leave granted.
2. Despite successive notices served on the respondent, he has chosen not to appear. The last notice clearly mentioned that the matter will be finally disposed of at notice stage.
3. The present appeal takes exception to the order dated 15th November, 2018 passed by the High Court of Madhya Pradesh, Indore Bench, thereby it allowed the application filed by the respondent for quashing of proceedings instituted against him under

Section 138 of the Negotiable Instruments Act, 1881. The sole argument of the respondent commended to the High Court was that a legal notice was not duly served on him within the statutory period.

4. After hearing counsel for the appellant, we have no manner of doubt that the reason commended to the High Court, is unacceptable. For, the fact that notice was duly served on the respondent or otherwise, is a triable issue; and cannot be proceeded as an indisputable position-as is expounded by this Court in '*Ajeet Seeds Limited vs. K. Gopala Krishnaiah*' reported in (2014) 12 SCC 685.

5. Accordingly, the impugned judgment and order is set aside and the appeal is allowed. Consequently, the complaint shall now proceed against the respondent in accordance with law.

6. The parties shall appear before the Trial Court on 14th October, 2019.

Cr1.A. @ SLP(Cr1.) No.166/2019

1. Leave granted.

2. Despite successive notices served on the

respondent, he has chosen not to appear. The last notice clearly mentioned that the matter will be finally disposed of at notice stage.

3. The present appeal arises from the judgment and order dated 15.11.2018 passed by the High Court of Madhya Pradesh, Indore Bench in M.Cr.C. No.17894 of 2018 whereby the High Court allowed the quashing petition filed by the respondent under Section 482 of Cr.P.C. on two counts. Firstly, that the legal notice has not been served on the respondent within the statutory period and secondly, because of the remark noted on the cheque return memo.

4. Both these facts would require the parties to produce evidence and are triable issues, as expounded by this Court in '*Ajeet Seeds Limited vs. K. Gopala Krishnaiah*' reported in (2014) 12 SCC 685 and in '*Laxmi Dyechem vs. State of Gujarat and Others*' reported in (2012) 13 SCC 375. As a result, even this appeal ought to succeed. The impugned judgment and order is accordingly set aside and the appeal is allowed.

5. Consequently, the complaint shall now proceed against the respondent in accordance with law.

6. The parties shall appear before the Trial Court on 14th October, 2019 before the Trial Court.

....., J.
(A.M. KHANWILKAR)

....., J.
(DINESH MAHESHWARI)

NEW DELHI
SEPTEMBER 03, 2019

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**CRIMINAL APPEAL NO.1325 OF 2019
(Arising out of SLP(Cr1.) Nos.137/2019)**

KISHORE SHARMA

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VERSUS

SACHIN DUBEY

RESPONDENT(S)

WITH

**CRIMINAL APPEAL NO.1326 OF 2019
(Arising out of SLP(Cr1.) No.166/2019)**

O R D E R

Cr1.A. @ SLP(Cr1.) Nos.137/2019

1. Leave granted.
2. Despite notices served on the respondent, he has chosen not to appear. The last notice clearly mention that the matter will be finally disposed of at notice stage.
3. The present appeal takes exception to the order dated 15th November, 2018 passed by the High Court of Madhya Pradesh, Indore Bench, against the respondent under Section 138 of the Negotiable Instruments Act, 1881 came to be quashed on accepting the sole argument of the respondent that

legal notice was not duly served on him within the statutory period.

4. The High Court was impressed by that argument and allowed the application M.Cr.C. No.17897/2018 filed under Section 482 of Cr.P.C. by the respondent and resultantly directed quashing of criminal case instituted against the respondent.

5. After hearing counsel for the appellant, we have no manner of doubt that the reason which commended the High Court, in our opinion, is unacceptable, for the fact that the notice was duly served on the respondent or otherwise is a triable issue and cannot be proceeded as indisputable position as is expounded by this Court in '*Ajeet Seeds Limited vs. K. Gopala Krishnaiah*' reported in (2014) 12 SCC 685.

6. Accordingly, the impugned judgment and order is set aside and the appeal is allowed. Consequently, the complaint shall now proceed against the respondent in accordance with law.

7. The parties shall appear before the trial Court on 14th October, 2019.

Cr1.A. @ SLP(Cr1.) No.166/2019

1. Leave granted.
2. Despite notices served on the respondent, he has chosen not to appear. The last notice clearly mention that the matter will be finally disposed of at notice stage.
4. The present appeal arises from the judgment and order dated 15.11.2018 passed by the High Court of Madhya Pradesh, Indore Bench in M.Cr.C. No.17894 of 2018 whereby the High Court allowed the quashing petition filed by the respondent under Section 482 of Cr.P.C. on two counts. Firstly, that the legal notice has not been served on the respondent within the statutory period and secondly, on the basis of the remark noted on the cheque return memo.
5. Both these facts would require the parties to produce evidence and are triable issues as expounded by this Court in in '*Ajeet Seeds Limited vs. K. Gopala Krishnaiah*' reported in (2014) 12 SCC 685 and in '*Laxmi Dyechem vs. State of Gujarat and Others*' reported in (2012) 13 SCC

375. As a result, even this appeal should succeed. The impugned judgment and order is accordingly set aside.

6. Consequently the complaint shall now proceed against the respondent in accordance with law.

7. The parties shall appear before the trial Court on 14th October, 2019 before the Trial Court.

....., J.
(A.M. KHANWILKAR)

....., J.
(DINESH MAHESHWARI)

**NEW DELHI
SEPTEMBER 03, 2019**

ITEM NO.25

COURT NO.8

SECTION II-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Cr1.) No(s). 137/2019

(Arising out of impugned final judgment and order dated 15-11-2018
in MCRC No. 17897/2018 passed by the High Court Of M.p At Indore)

KISHORE SHARMA

Petitioner(s)

VERSUS

SACHIN DUBEY

Respondent(s)

WITH

SLP(Cr1) No. 166/2019 (II-A)

Date : 03-09-2019 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE MR. JUSTICE DINESH MAHESHWARI

For Petitioner(s) Mr. Dhruv Dwivedi, Adv.
Mr. Ashish Yadav, Adv.
Mr. Sachin Sharma, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal(s) are allowed in terms of the
signed order.

Pending application(s), if any, shall stand
disposed of.

(NEETU KHAJURIA)
COURT MASTER

(VIDYA NEGI)
COURT MASTER

(Signed order is placed on the file.)