HIGH COURT OF DELHI

Bench: Hon'ble Mr. Justice Amit Sharma
Date of Decision:: 1st December, 2023

CRL.A. 707/2017

BHAVNA **..... Appellant**

versus

STATE & ANR **..... Respondents**

Sections, Acts, Rules, and Articles Mentioned in the Judgment:

Section 378(4) of Code of Criminal Procedure, 1973 (Cr.P.C.)
Section 118, 138, 139 of the Negotiable Instruments Act, 1988 (NI Act)
Section 27 of the General Clauses Act, 1897
Sections 63, 65, 114 of the Indian Evidence Act, 1872
Section 114 of the Indian Evidence Act, 1872

Subject: Acquittal of the respondent/drawer in a case involving the dishonor of cheques under Section 138 of the Negotiable Instruments Act. The core issue was the non-establishment of the service of legal demand notice to the drawer, which is a prerequisite for the initiation of proceedings under Section 138 of the NI Act.

Headnotes:

Negotiable Instruments Act – Section 138 – Acquittal of drawer for dishonor of cheque – Appellant's failure to prove service of legal demand notice crucial for the appeal against acquittal – Requirements under Section 138 NI Act not fulfilled – Appeal dismissed. [Para 1, 5, 20, 26]

Cheque Dishonor – Legal Demand Notice – Importance of proving service of legal demand notice for cheque dishonor cases – Failure to establish service of notice leads to acquittal – Photocopies of service proofs insufficient without originals or valid explanation for their absence. [Para 18, 19]

Appeal Against Acquittal – Principles guiding appellate court in appeals against acquittal – Presumption of innocence reinforced by trial court's acquittal – Interference by appellate court only on finding of perversity or legal error in trial court's judgment. [Para 21, 22, 24, 25]

Evidence – Burden of Proof – Complainant's burden to prove service of legal demand notice in cheque bounce cases – Photocopies of service proofs require validation under Indian Evidence Act for admissibility – Original documents' absence without explanation weakens case. [Para 18, 19, 20]

Postal Service – Presumption of Notice Delivery – General Clauses Act and Indian Evidence Act provide for presumption of notice delivery through postal service – Applicability of presumption depends on proving foundational facts of notice dispatch. [Para 17, 19]

Judicial Reasoning – Appellate court's approach in analyzing trial court's judgment – Evaluation based on legal correctness and factual accuracy without reappreciation of evidence unless necessary. [Para 21, 22, 24, 25]

Referred Cases with Citations:

- C.C. Alavi Haji v. Palapetty Muhammed, (2007) 6 SCC 555
- V. Raja Kumari v. P. Subbarama Naidu & Anr., (2004) 8 SCC 774
- Harcharan Singh v. Shivrani, (1981) 2 SCC 535
- Jagdish Singh v. Natthu Singh, (1992) 1 SCC 647
- K. Bhaskaran v. Sankaran Vaidhyan Balan, (1999) 7 SCC 510: 1999 SCC (Cri) 1284
- Central Bank of India v. Saxons Farms, (1999) 8 SCC 221: 1999 SCC (Cri) 1411
- State of M.P. v. Hiralal, (1996) 7 SCC 523
- Madhu v. Omega Pipes Ltd., (1994) 1 An LT (Cri) 603 (Ker)
- Basheera Begum v. Mohd. Ibrahim, (2020) 11 SCC 174
- Sadhu Saran Singh v. State of U.P.
- N. Vijayakumar v. State of Tamil Nadu, (2021) 3 SCC 687
- Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325
- Murugesan v. State, (2012) 10 SCC 383: (2013) 1 SCC (Cri) 69
- Sanjay Verma v. Gopal Halwai, 2019 (2) JCC 1490 (Para 11)
- Murlidhar v. State of Karnataka, AIR 2014 SC 2200: (2014) 5 SCC 730

Representing Advocates:

For Appellant: Mr. Vikrant Mittal, Advocate
For Respondents: Mr. Hitesh Vali, APP for State; Mr. Kunal Prakash, Advocate for Respondent No. 2
CORAMCORAM:
HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present appeal under section 378(4) of Code of Criminal Procedure, 1973 ('Cr.P.C.') has been preferred by the appellant assailing the judgment of acquittal dated 24.05.2016 in CC No. 2624/11 passed by the learned MM-03 (N.I. Act) Central, Tis Hazari Courts, Delhi whereby the respondent no. 2 (hereinafter referred to as „drawer") was acquitted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1988 ('NI Act').

Background

2. Briefly stated, the facts of the present case, as alleged in the complaint, are as follows:

i. The appellant and the drawer were already acquainted with each other prior to the arising of the present dispute between them as they live in the same vicinity.

ii. The drawer is a property dealer carrying on his business in Delhi and nearby places. He wanted to invest money in some property so as to expand his business.

iii. It is alleged that the drawer approached the appellant in the first week of November 2010 and requested for a loan of amount Rs. 4,00,000/-. Since he was known to the appellant prior to this transaction as the latter had lent money to him on several earlier instances, the appellant advanced the aforesaid amount in two installments of Rs. 2,00,000/- each on a mutually agreed term that the drawer will pay interest at the rate of 18% per annum on this loan amount on month to month basis.

iv. It is the case of the appellant that she paid an amount of Rs. 4,00,000/- in cash to the drawer by way of two installments of Rs. 2,00,000/- on 07.11.2010 and 15.11.2010, respectively.

v. It is alleged that in the discharge of the legal liability towards this loan amount, the drawer issued two post-dated cheques of the amount Rs. 2,00,000/- each bearing numbers 952732 and 952731 dated 02.04.2011 and 12.05.2011, respectively, which were drawn on Punjab National Bank, Subzi Mandi, Delhi.

vi. The appellant accepted these cheques towards the said consideration of the loan amount in good faith and that these will be honoured on presentation in the drawee bank.

vii. It is the case of the appellant that the drawer has also acknowledged his liability in writing *qua* the said loan amount vide a letter dated 15.11.2010 wherein the latter has duly assured and promised that he would repay the said amount.

viii. Soon thereafter on 12.05.2011, the appellant presented the abovementioned post-dated cheques for encashment after the date of their maturity. However, these cheques were returned uncashed by the drawee bank *vide* return memos dated 16.05.2011 with remarks "*Funds Insufficient*".

ix. It is alleged that the fact of dishonour of both the cheques was brought to the notice of the drawer by appellant several times, however, the former never took any initiative to repay the alleged cheque amount.

x. Finally, on 28.05.2011, the appellant called upon the drawer to make the payment of the impugned cheques amounting to Rs. 4,00,000/- along with interest by service of legal notice on the latter within 15 days from the notice.

xi. On non-payment of the alleged cheque amount, the appellant was constrained to file a complaint under section 138 of the NI Act against the drawer before the Court of learned MM-03 (N.I. Act) Central, Tis Hazari Courts, Delhi.

3. The learned Magistrate, after perusing the pre-summoning evidence tendered by the appellant in her affidavit at Ex. CW 1/A, and on the basis of other various documents relied on, took cognizance of the complaint. Thereafter, the learned Metropolitan Magistrate framed notice of the accusation against the drawer in which the latter admitted the issuance of cheques to the appellant but not for the discharge of any existing debt or liability towards the appellant but as security for the committee (financial pooling) of the local area and said that there was no legal liability due towards the said cheques to the appellant. He also stated that the legal demand notice for the making of the payment as required under proviso (b) to Section 138 of the NI Act has not been received by him.

4. During the trial, the appellant examined herself as the sole witness to substantiate her case by way of affidavit and relied upon her pre-summoning evidence by way of exhibits (Ex CW1/1 to Ex CW1/6). The appellant admitted the fact of having advanced loans to the drawer even prior to the present dispute and stated that the latter had not defaulted in their payment. On the other hand, the drawer despite being given several opportunities to lead defence evidence did not file any list of witnesses or any application to rebut the claim of the appellant and consequently, his right to lead defence evidence was closed by the learned Magistrate.

5. After hearing the final arguments, the learned Magistrate held that the fact of service of legal demand notice to the drawer has not been cogently proved on the basis of the evidence tendered and relied upon by the appellant. The learned Magistrate noted that there is overwriting on the alleged cheques that were produced by the appellant. The learned Magistrate further noted that the cross-examination of the appellant has not revealed anything substantial which tends to support the case of the drawer therefore, the statutory presumption in favour of the appellant stands unrebutted. However, in view of the non-service of the notice as provided in proviso (b) to Section 138 of the NI Act and material defects in the evidence led by the appellant, the learned Magistrate concluded that the components of Section 138 of the NI Act are not proved and acquitted the drawer *vide* judgment dated 24.05.2016 in CC No. 2624/11 titled „Bhavna v. Raju".

6. Feeling aggrieved by the impugned judgment, the appellant has preferred the present appeal against the judgment of acquittal given by the learned Magistrate.

Submissions on behalf of the Appellant/Complainant

7. Learned counsel for the appellant submitted that the learned Magistrate has failed to appreciate the fact that the drawer has acknowledged in writing the existence of alleged debt amount of Rs. 4,00,000/- to the appellant *vide* document dated 15.11.2010 (Ex. CW 1/3), which has been made by the drawer at his own instance out of free will in the presence of a person namely, Mr. Lal Chand s/o of Mr. Beg Raj, in the home of the appellant.

8. Learned counsel for the appellant contended that the impugned judgment is erroneous so far as it does not accept the presumption as provided under Section 27 of the General Clauses Act, 1987 in favour of the appellant regarding service of the legal demand notice sent to the drawer on 28.05.2011. It is the case of the appellant that during his cross-examination, no suggestion was made on behalf of the drawer with respect to the nonservice of the legal demand notice to him. Therefore, it would be contrary to the law to presume that the service of the said legal notice for the demand of payment of cheque amount was not made on the drawer.

9. Learned counsel for the appellant placed reliance on the documents produced by the latter in pre-summoning evidence and contended that the requirement of the service of statutory notice as has been envisaged in the proviso (b) to Section 138 of the NI Act has been duly complied with and further submits that the postal and courier receipts dated 28.05.2011 also supports case of the appellant. It is the case of the appellant that the learned Magistrate committed a grave error in not following the law laid down by the Hon‟ble Supreme Court in **C.C. Alavi Haji v. Palapetty Muhammed, (2007) 6 SCC 555** which duly covers the case of the appellant so far as the service of notice in the proviso (b) to Section 138 of the NI Act is concerned. It is alleged that the drawer despite the presumption and due service the drawer has not made the payment of the cheque amount to the appellant and hence, the offence under Section 138 of the NI Act is made out against him.

Submissions on behalf of the Respondent No. 2/Drawer

10. On the other hand, the learned counsel for the drawer submitted that the initial burden to prove that the appellant had the requisite funds for advancing the alleged loan amount to the drawer and that the alleged cheques were issued by the drawer against the discharge of the said loan amount lies on the appellant. The learned counsel for the drawer further

submitted that the appellant has also failed to discharge the initial burden of proof so as to attract the statutory presumption as provided for under Sections 118 read with 139 of the NI Act in her favour in the present case. It is the case of the drawer that the appellant has failed to establish the factum of issuance of the alleged cheques against the liability for repayment of the alleged loan amount of Rs. 4 lakhs.

11. Learned counsel for the drawer contended that there is nothing on record to substantiate the source of income of the appellant and establish the advancement of the loan amount of Rs. 4 lakhs by the appellant to him. It is the case of the drawer that the key witness Mr. Lal Chand in whose presence the handwritten acknowledgment of the alleged loan amount, on which the appellant placed reliance, was signed by the drawer (Ex CW 1/3), has not been examined during trial which seriously raises doubt regarding the veracity of the claim of the appellant.

12. The learned counsel for the drawer further submitted that the appellant in her cross-examination had admitted that she had not filed her Income Tax Return for the relevant period during which she claims to have advanced the alleged loan and to support this contention of the appellant, reliance is placed on the decision in **Sanjay Verma v. Gopal Halwai, 2019 (2) JCC 1490 (Para 11).** Learned counsel for the drawer further brought to the notice of this Court the fact that visibility of the date written on the cheques is not clear and the same could not be relied upon to determine the date of issuance of the cheque or when these alleged cheques were presented in the bank for the encashment by the appellant. He further submits that there is overwriting on the date which has been mentioned in those alleged cheques and therefore, it is not possible to determine as to when these cheques were presented for the encashment by the appellant. He also points out that in view of the overwriting made on those cheques, if the date on which the return memo of dishonor of the cheque is to be considered as correct then, these cheques had been presented after the expiry of limitation of six months.

13. It is further submitted that the appellant has not been able to establish that she had demanded the payment of cheque amount from the respondent as the proof of service of the notice has not been cogently proved before the learned Trial Court. Therefore, the respondent while disputing the service of legal demand notice to him questions the authenticity of the evidence relied on by the appellant in proof of the same as no original proof of service has been put on record by the appellant. The proofs of service which have been relied on are photocopies of the postal and courier receipt and no explanation

to the extent has been rendered by the appellant as to why he was not able to produce the original service of proof of the notice sent to the drawer.

Analysis and Findings

14. Heard the learned counsel for both parties and perused the record.

15. The only issue in the present appeal is whether the service of the notice on the drawer has been effected and the requirement of the proviso (b) to Section 138 of the NI Act has been sufficiently complied with. In the present case, the legal demand notice dated 28.05.2011 (Ex. CW-1/6) has been alleged to be served by the appellant on the drawer calling upon the latter to make payment of the said cheque amount of Rs. 4 lakhs. However, the service of this notice has been denied by the drawer on the ground that he has not received any such notice.

16. In order to file a complaint under Section 138 of the NI Act the service of notice to the drawer is a *sine qua non* and the burden to show that same has been served lies on the complainant as the cause of action for filing the complaint accrues only after the essential conditions enshrined in the proviso to Section 138 of the NI Act stands complied with. The Hon‟ble Supreme Court, in **V. Raja Kumari v. P. Subbarama Naidu & Anr., (2004) 8 SCC 774** while dealing with a question whether notice, as required under Section

138 of the NI Act, has been served or not has to be decided during trial and the complaint ought not to be dismissed at the threshold on the purported ground that there was no proper service of notice, held as under:

> “12. It is well settled that a notice refused to be accepted by the addressee can be presumed to have been served on him (vide *Harcharan Singh* v. *Shivrani* [(1981) 2 SCC 535] and *Jagdish Singh* v. *Natthu Singh* [(1992) 1 SCC 647]).
>
> 13. Here the notice is returned as addressee being not found 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 expression „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.”
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> 14. 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 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. 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.

15. This position was noted by this Court in *K. Bhaskaran* v. *Sankaran Vaidhyan Balan* [(1999) 7 SCC 510: 1999 SCC (Cri) 1284].

16. The object of notice is to give a chance to the drawer of the cheque to rectify his omission and also to protect an honest drawer. Service of notice of demand in clause (*b*) of the proviso to Section 138 is a condition precedent for filing a complaint under Section 138 of the Act. In the present appeal there is no dispute that notice was in writing and this was sent within fifteen days of receipt of information by the appellant Bank regarding return of cheques as unpaid. Therefore, the only question to be examined is whether in the notice there was a demand for payment. (See *Central Bank of India* v. *Saxons Farms* [(1999) 8 SCC 221: 1999 SCC (Cri) 1411].)

17. At this juncture it is relevant to take note of order passed by this Court in *State of M.P.* v. *Hiralal* [(1996) 7 SCC 523]. It was, inter alia, noted as follows: (SCC p. 524, para 1)

"*1*. In view of the office report, it would be clear that the respondents obviously managed to have the notice returned with postal remarks „not available in the house", „house locked" and „shop closed" respectively. In that view, it must be deemed that the notices have been served on the respondents."

18. In *Madhu* v. *Omega Pipes Ltd.* [(1994) 1 An LT (Cri) 603 (Ker)] the scope and ambit of Section 138 clauses (*b*) and (*c*) of the Act were noted by the Kerala High Court and Justice K.T. Thomas (as His Lordship then was) observed as follows: (An LT p. 606, para 7)

"[I]n clause (*c*) of the proviso the drawer of the cheque is given fifteen days from the date „of receipt of the said notice" for making payment. This affords clear indication that „giving notice" in the context is not the same as receipt of notice. Giving is the process of which receipt is the accomplishment. The payee has to perform the former process by sending the notice to the drawer in his correct address. If receipt or even tender of notice is indispensable for giving the notice in the context envisaged in clause (*b*) an evader would successfully keep the postal article at bay at least till the period of fifteen days expires. Law shall not help the wrongdoer to take advantage of his tactics. Hence the realistic interpretation for the expression „giving notice" in the present context is that, if the payee has dispatched notice in the correct address of the drawer reasonably ahead of the expiry of fifteen days, it can be regarded that he made the demand by giving notice within the statutory period. Any other interpretation is likely to frustrate the purpose for providing such a notice."

Therefore, the Hon"ble Supreme Court has held that once a notice has been sent on the correct address of the noticee it shall be deemed that the service of the notice has been affected unless contrary evidence is placed on record to rebut the same during the trial.

17. The Hon"ble Supreme Court, in **C.C. Alavi Haji v. Palapetty Muhammed &Anr., (2007) 6 SCC 555**, while answering a reference with respect to the

presumption in respect of an official act as provided under Section 114 of the Indian Evidence Act, 1872, observed as follows:

"**12.** Therefore, the moot question requiring consideration is in regard to the implication of Section 114 of the Evidence Act, 1872 insofar as the service of notice under the said proviso is concerned. Section 114 of the Evidence Act, 1872 reads as follows:

"114. *Court may presume existence of certain facts*.—The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustrations

The court may presume—

* * *

(*f*) that the common course of business has been followed in particular cases;

* * *"

13. According to Section 114 of the Act, read with Illustration (*f*) thereunder, when it appears to the court that the common course of business renders it probable that a thing would happen, the court may draw presumption that the thing would have happened, unless there are circumstances in a particular case to show that the common course of business was not followed. Thus, Section 114 enables the court to presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case. Consequently, the court can presume that the common course of business has been followed in particular cases. When applied to communications sent by post, Section 114 enables the court to presume that in the common course of natural events, the communication would have been delivered at the address of the addressee. But the presumption that is raised under Section 27 of the GC Act is a far stronger presumption. Further, while Section 114 of the Evidence Act refers to a general presumption, Section 27 refers to a specific presumption. For the sake of ready reference, Section 27 of the GC Act is extracted below:

"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 expression „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.

14. Section 27 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. In view of the said presumption, when stating that a notice has been sent by registered post to the address of the drawer, it is unnecessary to further aver in the complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the

ordinary course of business. This Court has already held that when a notice is sent by registered post and is returned with a postal endorsement "refused" or "not available in the house" or "house locked" or "shop closed" or "addressee not in station", due service has to be presumed. (Vide *Jagdish Singh* v. *Natthu Singh* [(1992) 1 SCC 647: AIR 1992 SC 1604]; *State of M.P.* v. *Hiralal* [(1996) 7 SCC 523] and *V. Raja Kumari* v. *P. Subbarama Naidu* [(2004) 8 SCC 774: 2005 SCC (Cri) 393].) It is, therefore, manifest that in view of the presumption available under Section 27 of the Act, it is not necessary to aver in the complaint under Section 138 of the Act that service of notice was evaded by the accused or that the accused had a role to play in the return of the notice unserved.

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.

*** *** ***

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."

In view of the above-mentioned observation, once the notice has been sent to the correct address of the drawer by the complainant through registered AD, it will be presumed that the drawer has duly received the same, and the burden to dislodge this presumption would be on the drawer which would be a question of fact to be determined during the course of the trial.

18. In the present case, during the trial, the drawer has not disputed the fact that the address affixed on the legal demand notice dated 28.05.2011 at Ex. CW 1/6 is not his address or it is incorrect. Both proof of service, the postal receipt and courier receipt, of this notice relied on by the appellant (Mark A*)* are photocopies of the original. However, no explanation has been given as to why the originals have not been placed on record either in the complaint or in the examination-in-chief by the appellant. It is further noted that the contents of the postal receipt placed on record are not visible at all.

19. Since the appellant has tendered the photocopies of the proof of service the same are required to be proved as per the provisions of Sections 63 and 65 of the Indian Evidence Act, 1872 so as to be admitted as evidence. There is nothing on record to show whether the originals of these documents have been lost or destroyed or in whose power and possession they had been kept. The appellant has also not given any explanation regarding the nonproduction of the original service proofs and the same are therefore, not in consonance with the provisions providing for the admissibility of the secondary evidence. The reliance placed by learned counsel for the appellant on paragraph 17 of **C.C. Alavi Haji (*supra*)** is misplaced as the observations made therein were made in circumstances where the presumption under Section 27 of the General Clauses Act and Section 114 of the Indian Evidence Act should be attracted. However, in the present case, the said presumption is not attracted as the foundational facts have not been proved. The presumption as per Section 27 of the General Clauses Act, 1897 and illustration (f) to Section 114 of the Indian Evidence Act, 1872 can be raised if the foundational facts regarding the dispatch of notice have been proved in accordance with law. The appellant could have led evidence from the concerned post office and the concerned agency to show that the notice was sent to the drawer.

20. Hence, on the basis of photocopies, it cannot be concluded that the notice has been dispatched to the drawer. Therefore, in view of the settled position of law as discussed above, this Court is of the view that the

requirement of the service of notice has not been complied with by the appellant, and the requisite conditions to file a complaint under Section 138 of the NI Act are not fulfilled in this case.

21. At this stage, since the present appeal is an appeal against acquittal, it is to be borne in mind that the powers of the appellate court in an appeal against acquittal under Section 378 of the Cr.P.C. are to be exercised only where it is shown that the findings in judgment are incorrect or perverse in law. The approach of the appellate court in the appeal against acquittal has been dealt with by the Hon"ble Supreme Court in **Murlidhar v. State of Karnataka, AIR 2014 SC 2200: (2014) 5 SCC 730.**

22. The Hon"ble Supreme Court in **Murlidhar (*supra)***, after referring to various decisions has culled out the principles relating to appeals from a judgment of acquittal. The Hon"ble Supreme Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following:

> "**12.**...(*i*) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;
> (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;
> (iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and
> (iv) Merely because the appellate court on reappreciation and reevaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."

23. The same view has been reiterated by the Hon"ble Supreme Court recently in **Basheera Begum v. Mohd. Ibrahim, (2020) 11 SCC 174** as follows:

> "190. At the cost of repetition, it is reiterated that the burden of proving an accused guilty beyond all reasonable doubt lies on the prosecution. If upon analysis of evidence two views are possible, one which points to the guilt of the accused and the other which is inconsistent with the guilt of the drawer, the latter must be preferred. Reversal of a judgment and

order of conviction and acquittal of the accused should not ordinarily be interfered with unless such reversal/acquittal is vitiated by perversity. In other words, the court might reverse an order of acquittal if the court finds that no person properly instructed in law could have upon analysis of the evidence on record found the accused to be "not guilty". When there is circumstantial evidence pointing to the guilt of the drawer, it is necessary to prove a motive for the crime. However, motive need not be proved where there is direct evidence. In this case, there is no direct evidence of the crime.

191. In Sadhu Saran Singh v. State of U.P., this Court observed that an appeal against acquittal has always been on an altogether different pedestal from an appeal against conviction. In an appeal against acquittal, where the presumption of innocence in favour of the accused is reinforced, the appellate court would interfere with the order of acquittal only when there is perversity. In this case, it cannot be said that the reasons given by the High Court to reverse the conviction of the accused are flimsy, untenable, or bordering on perverse appreciation of evidence."

24. The Hon"ble Supreme Court in **N. Vijayakumar v. State of Tamil Nadu, (2021) 3 SCC 687** has observed that an appellate court must bear in mind that in case of acquittal, there is double presumption in favour of the accused. *Firstly,* the presumption of innocence is available to him under the fundamental principal of criminal jurisprudence and *secondly,* the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court and held that if two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court. The observations of the Hon"ble Supreme Court are as follows:

"20. Mainly it is contended by Shri Nagamuthu, learned Senior Counsel appearing for the appellant that the view taken by the trial court is a "possible view", having regard to the evidence on record. It is submitted that the trial court has recorded cogent and valid reasons in support of its findings for acquittal. Under Section 378 CrPC, no differentiation is made between an appeal against acquittal and the appeal against conviction. By considering the long line of earlier cases this Court in the judgment in *Chandrappa* v. *State of Karnataka* [*Chandrappa* v. *State of Karnataka*, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325] has laid down the general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal. Para 42 of the judgment which is relevant reads as under: (SCC p. 432)

"*42*. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. *Firstly*, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. *Secondly*, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

21. Further in the judgment in *Murugesan* [*Murugesan* v. *State*, (2012) 10 SCC 383 : (2013) 1 SCC (Cri) 69] relied on by the learned Senior Counsel for the appellant, this Court has considered the powers of the High Court in an appeal against acquittal recorded by the trial court. In the said judgment, it is categorically held by this Court that only in cases where conclusion recorded by the trial court is not a possible view, then only the High Court can interfere and reverse the acquittal to that of conviction. In the said judgment, distinction from that of "possible view" to "erroneous view" or "wrong view" is explained. In clear terms, this Court has held that if the view taken by the trial court is a "possible view", the High Court not to reverse the acquittal to that of the conviction."
(emphasis supplied)

25. In view of the aforesaid discussion, this Court is of the opinion that there is no illegality, perversity or mis-appreciation of facts in the impugned judgment passed by the learned Magistrate.

26. The present appeal is dismissed and disposed of accordingly.

27. Pending applications, if any, also stand disposed of.

28. Bail bonds stand discharged.

29. Judgment be uploaded on the website of this Court, *forthwith.*