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**(2008) 03 AHC CK 0209**  
**In the Allahabad High Court**

Amit Yadav

APPELLANT

Vs

State of U.P. and Complainant, Harsingh Pal

RESPONDENT

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**Date of Decision :** 27-03-2008

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202

General Clauses Act, 1897 — Section 27

Negotiable Instruments Act, 1881 (NI) — Section 138, 142, 9

**Citation :** (2008) 4 BC 37 : (2008) CriLJ 3777

**Hon'ble Judges :** Amar Saran, J

**Bench :** Single Bench

**Final Decision :** Disposed Of

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## Judgement

Amar Saran, J.—Heard learned Counsel for the applicant and the learned A.G.A.

2. This application has been filed for quashing a summoning order dated 27.7.2007 passed by the Additional Chief Judicial Magistrate, Court No. 1, Aligarh in Complaint Case No. 441 of 2007.

3. The first submission of the learned Counsel for the applicant was that in the complaint no date of service of notice was mentioned and the same is in contravention of the decision of the Apex Court in Shakti Travel and Tours v. State of Bihar and Anr. 2003 SCC (Cri) 1217 and two decisions of this Court in Ravindra Singh Gugyani @ Sanju v. State of U.P. and Ors. 2007 (2) JIC, 457 (All) and Deepak Kumar and Anr. v. State of UP. and Anr. 2007 (1) JIC, 907 (All). It may be noted that it has been clearly mentioned in the judgement of the Apex Court that in the assertion of the complaint, there is no averment that the notice has been served, but the said case did not require that the date of service be mentioned. In the decision in Ravindra Singh Gugyani @ Sanju's case again there was no assertion that the notice was served and on this ground relying on the decision of Shakti Travels and Tours Hon'ble R.K. Rastogi, J., issued notice only. In the decision of Deepak Kumar and another passed by Hon'ble Vinod Prasad, J., it has been clarified that the notice had been sent by courier and it

had not been sent by registered post.

4. In the present case, the allegation in paragraph No. 8 of the complaint was that the notice had been sent by the complainant's wife, who was the payee and aggrieved person by registered post on 19.2.2007 and in paragraph No. 9, it was further submitted that the notice had been received by the accused, but he has not given any reply and the registry had not been returned. It may be useful here to quote Section 27 of the General Clauses Act.

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 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.

5. The said provision clearly points out that where any letter properly addressed to the recipient is sent and posted by registered post, then unless the contrary is proved, it shall be deemed that the notice shall have reached the recipient in the ordinary course of post. However, the drawer can rebut the presumption during trial that he was not served the letter or the address was wrong. This is also the view taken by the Apex Court in the very recent decision of C.C. Alavi Haji Vs. Palapetty Muhammed and Another, There is, therefore, no force in this contention of the learned Counsel for the applicant.

6. The next submission, however, of the applicant was that the complaint in the present case was signed not by the payee i.e. Smt. Urmila Devi, but by the power of attorney holder Harsingh Pal her husband. He has drawn my attention to Section 142 of the Negotiable Instruments Act, wherein it is mentioned in clause (a) that no Court shall take cognizance of any offence punishable u/s 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque. The holder in due course has been defined u/s 9 to mean any person who for consideration became the possessor of a promissory note, bill of exchange or cheque, if payable to the bearer or payee or the payee or indorsee thereof. Therefore there is force in the submission of the learned Counsel for the applicant that the power of attorney holder cannot be said to be either the payee or the holder in due course.

7. Learned Counsel for the applicant has also drawn my attention to the decision of the Kerala High Court *Ranjitha Balasubramanian and Anr. v. Shanti Group and Ors.* AIR 2007 kar 944 (KAR.), which mentions that if the complaint has not been filed or proceeded with by the proper person, the complaint is liable to be dismissed although a complaint may then be filed by the appropriate person and the Court may consider extending the time for filing the complaint.

8. In the present case, admittedly the opposite party No. 2 Harsingh Pal is the

husband and power of attorney holder of Smt. Urmila Deivi, who has signed the complaint and also given a statement u/s 200 Cr. P.C. and thereafter one Suraj Pal was examined u/s 202 Cr. P.C., and then the impugned summoning order was passed. Smt. Urmila Devi has neither signed the complaint nor examined herself u/s 200 Cr. P.C.

9. Learned A.G.A. submits that no useful purpose would be served in issuing notice to the opposite party No. 2 and keeping the proceedings pending in this Court.

10. In this view of the matter, I deem it proper to set aside the summoning order dated 27.7.2007, provided the applicant files a copy of this order before the Court concerned within three weeks. Thereafter, the learned Trial Court will summon the actual aggrieved person viz. Urmila Devi and pass appropriate orders after examining her u/s 200 Cr. P.C. if possible within four weeks. As it appears that the complaint was signed by the power of attorney, who also examined himself u/s 200 Cr. P.C. on improper legal advice it would be appropriate for the Court concerned to consider this circumstance for extending the time for filing the complaint under the proviso to clause (b) of Section 142 of the Act.

11. With these observations, this application is disposed of.