

(1996) 02 MAD CK 0066
In the Madras High Court
Case No : Criminal R.C.No.328 of 1996

K.R.K. Natarajan

APPELLANT

Vs

P. Kumar

RESPONDENT

Date of Decision : 06-02-1996

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (1998) 1 CTC 305

Hon'ble Judges : R. Balasubramanian, J

Bench : Single Bench

Advocate : Mr. D. Selvaraju, for the Appellant; Mr. S. Uthirasamy, for the Respondent

Judgement

R. Balasubramanian, J.—Revision petitioner is the complainant in C.C.No.152 of 1993 on the file of the Judicial Magistrate, Perundurai.

The respondent is the accused in that case. The learned trial Magistrate tried the respondent for an offence u/s 138 of the Negotiable Instruments

Act and found him guilty. The accused was sentenced to undergo simple imprisonment for three months. The accused filed an appeal bearing No.

C.A. 44 of 1994 on the file of the Principal Sessions Judge, Periyar District at Erode. The appeal was allowed on the sole ground that the notice of

demand contemplated to be issued prior to the launching of the complaint had not been proved to be served on the accused and on that sole

ground the learned Sessions Judge allowed the appeal and acquitted the accused. The judgment of the appellate Court is challenged in this

revision.

2. I heard Mr. D. Selvaraj, learned counsel appearing for the revision petitioner and Mr. S. Uthirasamy, learned counsel appearing for the

respondent. This case shall not detain me any more than what is really necessary. The learned Counsel for the revision petitioner has brought to my notice a judgment of the Hon''ble Supreme Court of India reported in Karnataka Public Service Commission v. P.S. Ramakrishna, 1996 (1)

Supreme 730 . It has been laid down in that case as follows:-

Though the notice was sent to the respondent on September 28, 1993, it came back with an endorsement "Not present. Hence return to

sender". It would be obvious that respondent is avoiding service. Notice must, therefore, be deemed to have been served on the respondent.

I perused the records. In this case, the notice of demand had been sent registered post with acknowledgement due. It appears that at that time

when the letter was attempted to be served, the addressee/accused was not there. Therefore an intimation was left in his address to come and

collect the letter from the Post Office. However it appears that the accused did not come and take delivery of the letter at all. Again P.W.4 went to

deliver the letter to the accused and he was not available. Under these circumstances, the cover was returned to the complainant. These aspects

are spoken to by P.W.4 (Postman) and P.W.5 (Postmaster). The attempts made by P.W.4 to serve the letter and his failure is also mentioned in

the complaint. The complaint also discloses that the accused wilfully neglected to receive the notice from the post office. Under these

circumstances and in view of the judgment referred to above, I have to necessarily hold that the notice in this case has been served on the accused.

3. In view of my decision on this issue, which was the only issue on which the acquittal was based, I am inclined to allow this revision and remand

C.A.No.44 of 1994 to the file of the Principal Sessions Judge, Erode to dispose of the appeal on merits on the evidence already available on

records.