

SUPREME COURT OF INDIA

Shakti Travel

Vs.

State of Bihar

(G.B. Pattanaik and U.C. Banerjee JJ.)

28.04.2000

ORDER

G.B. PATTANAİK, J.

1. Leave granted.

2. Accused who is the Appellant, assails the order of the High Court refusing to quash the complaint filed under Section 138 of the Negotiable Instruments Act. The only ground on which the learned Counsel for the Appellant prays for quashing of the complaint is that on the assertions made in paragraph 8 of the complaint, it must be held that notice has not been served and, therefore, an application under Section 138 could not have been maintained. Undoubtedly, the accused has a right to pay the money within 15 days from the date of the service of notice and only when it fails to pay, it is open for the complainant to file a case under Section 138 of the Negotiable Instruments Act. That being the position and in the complaint itself having not been mentioned that the notice has been served, on the assertions made in paragraph 8, the complaint itself is not maintainable. We accordingly quash the complaint.

3. The appeal is accordingly allowed.