

SUPREME COURT OF INDIA

M/s. Indo Automobiles

Vs.

M/s. Jai Durga Enterprises

CrI.A.No.1101 of 2008

(Tarun Chatterjee and Aftab Alam JJ.)

15.07.2008

ORDER

1. Leave granted.
2. This appeal is directed against an order dated 17th of May, 2006 passed by the High Court of Judicature at Allahabad in Criminal Misc. Application No.11313 of 2005.
3. In spite of due service, no one has appeared before us to contest this appeal.
4. We have heard the learned counsel for the appellant and perused the materials on record.
5. A proceeding under Section 138 of the Negotiable Instruments Act was initiated against the respondents. In the said proceeding, the Judicial Magistrate, First Class, Saharanpur passed an order summoning the respondents for trial. Challenging the aforesaid order, an application under Section 482 of the *Code of Criminal Procedure* was moved by the respondents for quashing the summons. The High Court by the impugned order had quashed the said proceeding on the ground that no notice was served on the respondents.
6. Feeling aggrieved, this Special Leave Petition was filed which, on grant of leave, was heard in the presence of the learned counsel for the appellant.
7. Having considered the materials on record and after hearing learned counsel for the appellant, we are of the view that the impugned Judgment of the High Court cannot be sustained for the reasons stated hereinafter.
8. Admittedly, notice under Section 138B of the *Negotiable Instruments Act* was sent to the respondents through registered post and under a certificate of posting on their correct address of the respondents. The High Court had quashed proceeding on the ground that although notice through registered post and also under certificate of posting were sent by the appellant/ complainant to the respondents but because of the endorsement of the postal peon, the service could not be said to have been effected. In our view, the High Court was not

justified in holding that service of notice could not be found to be valid. In *K.Bhaskaran vs. Sankaran Vaidhyan Balan & Anr.*¹, it has been held that the context of section 138B of the Negotiable Instruments Act invites a liberal interpretation favouring the person who has the statutory obligation to give notice under the Act because he must be presumed to be the loser in the transaction and provision itself has been made in his interest and if a strict interpretation is asked for that would give a handle to the trickster cheque drawer. It is also well settled that once notice has been sent by registered post with acknowledgment due in a correct address, it must be presumed that the service has been made effective. We do not find from the endorsement of the postal peon that the postal peon was at all examined. In *V. Raja Kumari vs. P. Subbarama Naidu & Anr.*², again this Court reiterated the same principle and held that the statutory notice under Sections 138 and 142 of the Negotiable Instruments Act, 1881 sent to the correct address of the drawer but returning with the endorsement must be presumed to be served to the drawer and the burden to show that the accused drawee had managed to get an incorrect postal endorsement letter on the complainant and affixed thereof have to be considered during trial on the background facts of the case.

9. That being the position, we are unable to sustain the order of the High Court and the impugned order is set aside and the proceeding started under Section 138 of the Negotiable Instruments Act is restored to its original file. The appeal is, therefore, allowed to the extent indicated above. We, however, make it clear that at the trial stage on the question of interpretation, postal endorsement affixed thereof shall be considered on the background facts of the present case.

¹1999 (7) SCC 510

²2004 (8) SCC 774