

**Sheela Vs. Gopalakrishnan**

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**SooperKanoon Citation :** [sooperkanoon.com/717628](http://sooperkanoon.com/717628)

**Court :** Kerala

**Decided On :** Jan-28-2005

**Reported in :** 2005(1)ALD(Cri)41; [2006]129CompCas93(Ker); 2005CriLJ3274; 2005(1)KLT877

**Judge :** J.M. James, J.

**Acts :** [Negotiable Instruments Act, 1881](#) - Sections 138

**Appeal No. :** Cri.A. No. 643 of 2004

**Appellant :** Sheela

**Respondent :** Gopalakrishnan

**Advocate for Def. :** R. Rajasekharan Pillai, Adv. and; K. Harilal, Public Prosecutor

**Advocate for Pet/Ap. :** R. Padmakumar, Adv.

**Disposition :** Appeal allowed

**Judgement :**

**J.M. James, J.**

1. The receipt of a registered notice by the wife of the respondent, hereinafter referred to as 'the accused', with acknowledgement due, sent by the appellant-complainant under proviso (b) to Section 138 of the [Negotiable Instruments Act,](#)

[1881](#), in short 'the Act', whether is sufficient notice and dismissal of complaint by the Magistrate as the said notice is invalid is sustainable under the Act, are the points that arise for consideration.

2. The complainant filed a complaint before the Judicial First Class Magistrate Court, Mavelikara, as Ext. P1 cheque dated 20.12.1999, has been dishonoured, when presented for clearance. She, therefore, sent Ext.P4 registered notice. It was received CrI. A. No. 643 of 2004. Decided on 28th January, 2005. by the wife of the accused. The learned Magistrate accepted the contention of the accused that the receipt of the notice by the wife, is not a sufficient notice as contemplated under the Act. The Court also accepted the principle contained in B. Adhikari v. Ponraj (1996 CrI. L.J. 180) and also in Subhash Chander v. Pritam Singh Machinewala (2003 CrI. L.J. 2157). Therefore, dismissed the complaint. Hence, this appeal.

3. The learned counsel appearing for the accused contented that the cheque has been issued from an account which was inoperative, and the complainant did not prove that the wife of the accused was the authorised person to receive a registered article on behalf of the accused.

4. In B. Adhikari's case supra, on dishonour of the cheque, notice was sent by the complainant to Adhikari, the accused therein, informing him of the dishonour of the cheque issued by him and demanding the amount therein. But that notice was returned as unserved with an endorsement 'not found'. The complainant filed a complaint. The Honourable Madras High Court held that the provisions of Sub-clauses (b) and (c) of Section 138 of the Act, as the law then stood, are mandatory provisions, and the non-compliance of the same would be a ground for acquittal of the accused.

5. In Subhash Chander's case supra, the learned Single Judge of Honourable Jammu & Kashmir High Court, after appreciating the facts of that case, came to the conclusion that there being nothing on record to show as to when the notice of demand was served on the drawer under Section 138 of the Act, service of notice cannot be deemed or presumed, and that depends upon the facts of each case. Therefore, it was held that there was no notice as contemplated under the

provisions of the Act.

6. In the case at hand, DW.2, the accused, had admitted that the address noted in Ext.P5, postal acknowledgment card, was correct and he is residing in that address. Further, during Section 313 Cr.P.C. examination, he admitted that he came to know of the liability only when he received Ext.P4 Advocate Notice, which his wife received. Therefore, the receipt of notice is admitted by the accused.

7. In *Madhu v. Omega Pipes Ltd.* (1994 (1) KLT 441), this Court held that after the payee had despatched notice in the correct address of the drawer, it can be regarded that he made the demand by giving notice under the Act. In *Mahadevan Sunil Kumar v. Bhadrans* (1991 (1) KLT 651), notice was sent to the accused through registered post. Interpreting S .27 of the General Clauses Act, a learned Single Judge of this Court, held that the service shall be deemed to be effected, if a properly addressed pre-paid letter containing the document is sent by registered post, unless the contrary is proved.

8. In *Joseph Jose v. Baby* (2002 (3) KLT SN 64 P.46), it was held that sending of notice in correct address is sufficient compliance under the provisions of the Act. *Mohammed Ashraf v. Sharafuddin* (2003 (3) KLT SN 104 P.77) also lays down similar legal principle.

9. In the case at hand, the receipt of notice by the wife of the accused is admitted. The address stated as could be seen from Ext.P5 postal acknowledgement card is the one in which the accused was residing. Therefore, sending of Ext.P4 notice was in the correct last known address of the accused. The receipt of the notice by his wife also is referred, when he was examined under Section 313 Cr.P.C. In *B. Adhikari's* case cited and discussed above, it was return of notice as 'not found'. Therefore, the facts of *Adhikari's* case are different than one in the case at hand. Similarly, in *Subhash Chander's* case, the Court found that neither in the complaint nor the evidence adduced by the complainant, any material was brought out as to when the notice of demand was given by the complainant and was received by the accused as is necessary, under Clause (c) of proviso to Section 138 of the Act. It was because of that reason that the learned Single Judge of the Jammu & Kashmir High Court, found that there was no service of notice. Thus, the facts are

entirely different in the case under discussion.

10. The consistent principle of law adopted by the Apex Court as well as this Court is that the proof of sending of the notice in the correct last known address is sufficient compliance, as contemplated under Section 138 of the Act. As the wife of the accused had admittedly received the notice, according to me, it is not at all necessary for the complainant to cite and examine the postman or the wife of the accused to show that she had been duly authorised by the accused to receive Ext.P4 notice. In the light of the evidence available on record, it is for the accused to rebut the evidence regarding the receipt of Ext.P4 notice. But he stated that he came to know of the fact of the payment of amount, and dishonour of the cheque only after going through Ext.P4 notice received by his wife. Hence, considering the evidence on record, I hold that the complainant has issued notice as contemplated the Act, and the same had been received by the accused.

11. The contention of the learned counsel appearing for the accused that the account was inoperative cannot be accepted and the evidence through PW.2 show that Ext.P1 cheque was issued on an account maintained by him, in the bank of PW.2. Therefore, the same covers the requirement of Section 138 of the Act.

12. In view of the above facts in this case, I hold that there was a valid notice and receipt of notice by the wife of the accused is sufficient notice to the accused. In view of the above discussions, I set aside the impugned judgment of the Court below.

13. The evidence available clearly show that the complainant has established a case under Section 138 of the Act. Therefore, I hold the accused guilty thereunder. Considering that it is a cheque of 1999, I am not inclined to send the accused to jail. However, I sentence him to undergo imprisonment for a day till the raising of the Court and also to pay a fine of Rs. 60,000/-, in default of which to undergo imprisonment for six months. If the fine amount is realised, the same shall be paid to the complainant.

The accused shall appear before the Court below and receive the sentence of imprisonment, failing which the Court shall proceed according to the law.

Criminal Appeal is allowed as above.

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