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EMAIL OR WHATSAPP NOTICE VALID IN CHEQUE DISHONOUR CASES

The Allahabad High Court (“**HC**”), in the *Rajendra* case,¹ held on January 25, 2024, that a notice under Section 138² of the Negotiable Instruments Act, 1881 (“**NI Act**”) served through email or WhatsApp fulfils the requirements of the Information Technology Act, 2000 (“**IT Act**”) and is therefore valid.

Brief Facts

A petition³ was filed by one Rajendra against the two opposite parties including the State of Uttar Pradesh (“**Respondent**”), seeking quashing of the summoning order and entire proceedings in a complaint filed under Section 138 of the NI Act before the court of the Metropolitan Magistrate (“**Complaint**”), in which he was named as one of the accused. The NI Act⁴ mandates that a payee (or the holder in due course) of the cheque must make a demand by written notice to the drawer of the cheque within 30 days of receiving information of cheque dishonour from the bank, i.e., returned unpaid.

Consequently, if the drawer of the cheque fails to make payment within 15 days of receipt of the written notice, a complaint under the above section may be filed against the defaulting drawer.

Rajendra’s Contentions

Rajendra sought quashing of the Complaint claiming that it was defective as it was filed before the expiration of 15 days from the date of serving notice. Since Complaint did not specify date of service of the notice, the presumption of 30 days, as available the General Clauses Act, 1977⁵ (“**GC Act**”), will be applicable. Therefore, the Complaint should have been filed only after 45 days of serving notice.

¹ *Rajendra v. State of U.P. and Another*, 2024:AHC:14247 (“**Judgment**”).

² *Dishonour of cheque for insufficiency, etc., of funds in the account*.

³ Under Section 482 of the Criminal Procedure Code, 1973 providing for “*Saving of inherent powers of High Court*”.

⁴ See section 138 (b) and (c) of the NI Act.

⁵ See Section 27 of the GC Act.

He relied on various HC judgements including the Jharkhand HC where it has been held that any complaint filed before the expiry of 15 days from the date of service of notice, is no complaint in the eyes of law.

Respondent's Contentions

It is well settled law that the date of service of notice sent by the complainant upon the drawer of the cheque is not required to be mentioned in the complaint. The defence, whether notice was served or not, can be considered during the trial. Therefore, this cannot be a ground for quashing of a complaint proceeding under the NI Act.

HC's Judgement and Reasoning

When answering issues before it, the HC observed that the NI Act⁶ only provides for giving a notice in writing, but no mode of giving notice is provided. Section 94⁷ of NI Act prescribes that notice of dishonour may be given orally or in writing and may, if in writing, be sent by post and therefore does not mandate that written notice should be sent only by post.

Section 4 of the IT Act provides equivalence to any information provided in electronic form with that of the information provided in writing, typewritten or printed form that is required to be provided under any law. The expression '*electronic form*'⁸ is defined as "*any information generated, sent, received or stored in media, magnetic, optical, computer memory, micro film, computer generated micro fiche or similar device.*"

Section 13 of the IT Act provides for time and place of dispatch of electronic records, making it clear that:

- a. as soon as the notice in electronic form enters a computer resource outside the control of the originator, it is deemed to be dispatched; and
- b. as soon as the notice enters the computer resource of the addressee, it is deemed to be served.

It held that: "*[i]t is clear that notice sent through 'email or WhatsApp' shall be deemed to be dispatched and served on the same date, if it fulfill the above requirement of Section 13 of I.T. Act, 2000.*"

Dismissing the petition, the HC directed the trial courts *inter alia* to consider notice to the drawer of the cheque sent through 'email or WhatsApp' as a valid notice under Section 138 of the NI Act and such notice shall be deemed to be served on the date of its dispatch.

This *Counselence Connect* contains information in a nutshell on a recent change in law.

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⁶ See Proviso (b) of Section 138 of the NI Act.

⁷ Mode in which notice may be given.

⁸ See section 2(1)(r) of IT Act.