

Order Below Exh.1 in Criminal Enquiry No : 18146/2024

Heard, Perused the entire record of the present case as the complaint is being filled for the offence under section 25 of The Payment & Settlement Act, 2007. Moreover provision of chapter-XVII of N.I. Act is applicable to the payment and settlement Act and the accused has selected the mode of Payment through ECS (ELECTRONIC CLERANCE SYSTEM).

The Hon'ble Allahabad High Court in **Rajendra Versus State Of U.P. And Another.**, 2024 (0) AIJEL-UP 4201974 held that The Apex Court in C.C. Alavi Haji (supra) case observed that while interpreting the Section 138 N.I. Act regarding service of notice it must be borne in mind the court should not adopt an interpretation that helps the dishonest drawer of the cheque to evade and trap the honest payee, and it should be incorporated liberally in favour of the honest payee. The court further observed that as soon as the payee dispatched the registered post with the correct address of drawer, the presumption of service as under Section 27 of the General Clause Act would be attracted. Para 10 of the C.C. Alavi Haji (supra) case is being quoted hereinbelow,

"10. It is, thus, trite to say that where the payee dispatches the notice by registered post with the correct address of the drawer of the cheque, the principle incorporated in Section 27 of the G C Act would be attracted, the requirement of Clause (b) of the proviso to Section 138 of the Act stands complied with and cause of action to file a complaint arises on the expiry of the period prescribed in Clause (c) of the said proviso for payment by the drawer of the cheque. Nevertheless, it would be without prejudice to the right of the drawer to show that he had no knowledge that the notice was brought to his address."

25. Therefore, this Court holds that there is no legal requirement to mention the date of service of notice upon the drawer of the cheque in the complaint itself, if the notice was sent through registered post, then presumption under Section 27 of the General Clause The act will automatically come into the picture.

The Hon'ble Supreme Court in **Ajeet Seeds Limited Versus K.Gopala Krishnaiah**, 2014 (0) AIJEL-SC 55647, has held in para 10 as under:-

10. It is thus clear that Section 114 of the Evidence Act enables the Court to presume that in the common course of natural events, the communication would have been delivered at the address of the addressee. Section 27 of the G C Act gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. It is not necessary to aver in the

complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business.

The present complaint was kept for inquiry and this court has gone through the complaint and the documents attached with it and after perusing the complaint at the affidavit of complainant it appears that ELECTRONIC CLEARANCE SYSTEM (ECS) has been dishonoured at Ahmedabad. A bare reading of the complaint, affidavit in evidence and the documents shows that there is prima facie case against the accused and considering the Section 25 of Payment and settlement Act it appears this court has jurisdiction to take cognizance. Therefor after perusing the entire record along with the complaint and in view of the aforesaid discussion and in view of the aforesaid position of law and after inquiry there is prima facie case for the offence under Section 25 of Payment and settlement Act against the accused. For the foregoing reasons, this criminal enquiry is accordingly disposed of and The present complaint is hereby order to be registered as Criminal Case and order to issue summons against the accused for the offence of U/Sec.25 of Payment and settlement Act.

Accordingly, Summons be issued in the prescribed form. Moreover, accused is hereby directed to furnish a surety amount of Rs.10,000/- in wordsd rupees ten thousand only before this Court for the purpose of securing his/her presence during the trial of the present complainant. In addition to normal mode of service, the complainant is also permitted to serve the summons through R.P.A.D. and email. In case of service by email, the complainant is required to declare that the email address is correct.

NEXT DATE:04/06/2025

Date:02/04/2025
Ahmedabad.

(Bhadresh Hasmukhlal Gandhi)
14th Addl chief Judicial Magistrate
Ahmedabad City
(N.I.A Court no.27)
(Judge Code no.GJ00957)