

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(s). 814 OF 2009

M/S INDO GULF FERTILISERS LTD. ... APPELLANT(S)

VERSUS

MAYANK AGARWAL & ANR.RESPONDENT(S)

O R D E R

In this appeal the appellant challenges the order passed by the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Criminal Misc. Case No. 1 of 2005 dated 09.08.2007 quashing the summoning Order dated 26.08.2003 passed in the second complaint and also quashing the order passed by the Trial Court dated 14.10.2004 dismissing the discharge petition filed by respondent No. 1 herein.

It is not necessary for us to advert to the facts as the same are elaborated in the impugned order of the High Court. The undisputed facts are that for the

alleged dishonour of the cheques, the appellant has issued notice on 3.03.2003 through registered post to the respondents and the same was returned on the

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afternoon of 16.04.2003. Even before the receipt of the said notice, the appellant has filed a complaint under Section 138 of the Negotiable Instruments Act (hereinafter referred to as "the Act") on the forenoon of 16.04.2003. According to the appellant, the

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unserved notice was received by it in the afternoon of 16.04.2003. After the receipt of the said notice, according to the appellant, the same was again sent to the respondents on 26.04.2003 by registered post and courier but the same was refused by the respondents and, ultimately, on 6.05.2003 the service was effected by the Advocate Notary. Thereafter, the second complaint was filed on 23.05.2003 in which summons were issued to the respondents on 26.08.2003. Challenging the issuance of summons order in the second complaint and challenging the order passed in the application declining to discharge the accused respondents, the respondent No 1 has filed the petition under Section 482, as noted supra.

We have heard learned counsel for the appellant. Despite service of notice, none appears for the respondents.

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Learned counsel for the appellant submitted that as per Section 94 of the Act the notice of dishonour may be given to the duly authorised agent of the person to whom it is required to be given either oral or written and if written "be sent by post and may be in any form". The learned counsel for the appellant laid emphasis upon the words, "...and may be in any form..." and submitted that notice of dishonour sent to the duly authorised agent need not necessarily be sent by post and it can even be served by affixture or through an Advocate Notary, as has been done by the appellant, and therefore it was submitted that the High Court was not right in holding that there was no proper service of notice on the respondents herein. It is not in dispute that insofar as the first complaint is concerned, it is also not in dispute that after the

dishonour, notice was discharged, the same did not return till 16.04.2003 afternoon, on which day Complaint Case No. 552 of 2003 before the Judicial Magistrate, Lucknow was registered. In the evening of 16.04.2003, the unserved notice was returned to the appellant. So far as the first complaint is concerned, thus admittedly there was no service of notice upon the respondents. Insofar as the second complaint filed

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on 23.05.2003, even according to the appellant, the notice was affixed on the door of the residence of the respondents as also served through Advocate Notary as contemplated under Section 94 read with Section 138(c) of the Act. The notice of dishonour sent to the agent of the person to whom it is required to be given has to be necessarily be sent by post. The expression, occurring in Section 94 of the Act "...and may be in any form..." would only refer to a "form of notice" and not the "mode of service" of notice. As per second part of Section 94 of the Act, after the notice is duly served on the authorised agent of the person to whom it is required to be given, if written, "be sent by post" reiterates the intent of the legislature that the notice of dishonour has to be necessarily be sent only through post and not in any other mode.

After referring to the various dates and pointing that there was no proper service of notice upon the respondents in both the complaints and after referring to the judgment of this Court in the case of Sadanandan Bhathran vs. Madhwan Sunil Kumar, AIR 1998 SC 3043, the High Court has rightly quashed the summoning order in the second complaint as well the

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order dated 14.10.2004 passed in the second complaint.

