

**IN THE SUPREME COURT OF INDIA**  
**CRIMINAL APPELLATE JURISDICTION**  
**CRIMINAL APPEAL NO.711 OF 2009**  
**(Arising out of S.L.P. (Crl.) No.7828 of 2007)**

**M.D. Thomas**

**...Appellant(s)**

**Versus**

**P.S. Jaleel and Anr.**

**...Respondent(s)**

**O R D E R**

**Leave granted.**

**Heard learned counsel for the parties.**

**The Trial Court, upon conclusion of the trial, acquitted the appellant of the charge under Section 138 of the Negotiable Instruments Act, 1881, [for short ‘the Act’]. On appeal by the complainant, the High Court set aside the order of acquittal, convicted the appellant and sentenced him to undergo imprisonment till the rising of the Court and directed to pay the sum of rupees one lakh twenty thousand to the complainant; in default, to undergo further simple imprisonment for a period of three months. Against the said order, present appeal has been filed by special leave.**

**Learned counsel for the appellant argued that his client’s conviction is liable to be set aside because before filing complaint, the respondent did not serve upon him notice as per the requirement of Clause (b) of proviso to**

**....2/-**

Section 138 of the Act. He submitted that service of notice on the appellant's wife cannot be treated as compliance of the mandate of law. Learned counsel for respondent No.1 did not dispute that the notice issued by his client was, in fact, served upon the appellant's wife but argued that this should be treated as sufficient compliance of the requirement of giving notice of demand.

Section 138 deals with the dishonour of cheque for insufficiency, etc., of funds in the accounts of the person who draws the cheque and lays down that such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both. Proviso to Section 138 specifies the conditions which are required to be satisfied before a person can be convicted for an offence enumerated in the substantive part of the section. Clause (b) of the proviso to Section 138 cast on the payee or the holder in due course of the cheque, as the case may be, a duty to make a demand for payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid. In the present case, the notice of demand was served upon the wife of the appellant and not the appellant. Therefore, there is no escape from the conclusion that complainant-respondent had not complied

....3/-



with the requirement of giving notice in terms of Clause (b) of proviso to Section 138 of the Act. Unfortunately, the High Court overlooked this important lacuna in the complainant's case. Therefore, the conviction of the appellant cannot be sustained.

In the result, the appeal is allowed. The impugned order is set aside and the order of acquittal passed by the Trial Court is restored.

[B.N. AGRAWAL]

.....J.

[G.S. SINGHVI]

.....J.

New Delhi,  
April 13, 2009.

