DEEMED SERVICE OF DEMAND NOTICE UNDER SECTION 138 OF THE NEGOTIABLE INSTRUMENTS ACT: A CRITICAL ANALYSIS OF SAINABA V. STATE OF KERALA

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ABSTRACT

The condition of a written demand notice provided under Section 138 proviso (b) of the Negotiable Instruments Act, 1881 is a condition precedent to prosecution for cheque dishonor. The conflict is in cases when a notice is properly addressed to the drawer and is delivered to a family member or other person at that address. In *Sainaba v. State of Kerala*, the Supreme Court held that a notice sent by registered post to the drawer's correct address is presumed to be served, even if the drawer's mother receives it, and that the drawer must rebut the presumption. The Court held *M.D. Thomas v. P.S. Jaleel* to be *per incuriam* because it ignored the three-Judge Bench decision in *C.C. Alavi Haji v. Palapetty Muhammed*. *Sainaba* restores the presumption that follows from proper dispatch and places the burden of rebuttal on the drawer. The Court's statement that the presumption arises irrespective of the recipient's identity is, however, wide. It should not, however, be interpreted as an endorsement that every delivery is considered a constructive notice of service to a third party. Whereas the address, circumstances of delivery and accused's evidence is relevant for rebuttal.

Keywords: Section 138 of the Negotiable Instruments Act, 1881; Sainaba v. State of Kerala; statutory demand notice; deemed service of notice; presumption of service; burden of proof.

1. Introduction

Section 138 of the Negotiable Instruments Act, 1881 (NI Act) punishes the dishonor of a cheque issued towards an enforceable debt or obligation, if the proviso to the section is satisfied. There are two requirements: the payee or the holder in due course must make a written demand for payment by notifying the drawer within thirty days of the bank's notification that the cheque has been dishonored. The drawer then has fifteen days from receipt of the notice to pay. The notice requirement is not just courteousness, it is the chance of the drawer to pay and not be held criminally liable[1].

The difficulty is determining what counts as "giving" notice where it is sent to the drawer's correct address but accepted by another person, such as a spouse, parent or other relative. Must the complainant prove that the drawer personally received and read the notice? Or is correct dispatch enough to raise a presumption of service, leaving the drawer to rebut it? The Supreme Court's decision in Sainaba v. State of Kerala[2] addresses this question and reconsiders M.D. Thomas v. P.S. Jaleel[3] in light of the earlier three-Judge Bench decision in C.C. Alavi Haji v. Palapetty Muhammed[4].

The main contribution of Sainaba is its clarification of the burden of proof. Once the complainant proves that the notice was properly sent to the drawer's correct address, the complainant does not usually have to prove that the drawer actually knew about the notice[5]. The drawer may rebut this assumption by establishing that the address was wrong, that the notice was not sent to the address or that the circumstances make it unlikely that the notice will be received. Hence deemed service is a presumption which can be rebutted and not a fact that any notice sent to a third party is deemed to be served on the drawer.

2. Facts and Procedural History

The dispute arose from an alleged loan of ₹3,00,000 and a cheque drawn on Catholic Syrian Bank, Perumbavoor Branch. The cheque was dishonored. The complainant issued a demand notice dated 31 August, 2016 by registered post to the address associated with the accused. The

[1] The Negotiable Instruments Act, 1881, No. 26 of 1881, S.138, provisos (b)-(c) (India)
[2] *Sainaba v. State of Kerala*, Crim. App. No. 4640 of 2026, 24, 30 (India Sept. 30, 2026)
[3] M.D. Thomas v. P.S. Jaleel, (2009) 14 SCC 398 (India)
[4] C.C. Alavi Haji v. Palapetty Muhammed, (2007) 6 SCC 555 (India)
[5] *Sainaba*, Para. 24, 31-35.

notice was received by the accused's mother, Amina, and not personally by the accused. No payment was made in response, and no reply to the notice was sent.

The accused did not dispute the address used for the notice. The same address appeared in court-related documents, including the summons record, vakalatnama and subsequent appeal and revision papers. Nor was it asserted that the accused was estranged from his mother or was living separately from her. In his statement under Section 313 of the Code of Criminal Procedure, the accused stated that he had borrowed a total of ₹7,00,000, had repaid the amount, and had handed over a blank signed cheque when borrowing ₹3,00,000.

The trial court convicted the accused under Section 138 on 10 July 2019 and imposed six months' simple imprisonment and a fine of ₹3,00,000, with a default sentence. The appellate court affirmed the conviction on 16 February 2023. The Kerala High Court, in Noorudheen v. State of Kerala[6], set aside the conviction. Following its own earlier decision in *Saju v. Shalimar Hardwares*[7], which rested on *M.D. Thomas*, it reasoned that service on a third person, here the accused's mother, is not service on the accused unless there is evidence that he knew of it.

The Supreme Court allowed the complainant's appeal and restored the trial court's conviction. It held that the High Court had applied the wrong approach to the burden of proof and that M.D. Thomas could not govern the issue because it had overlooked the binding rule in C.C. Alavi Haji[8].

3. Statutory Framework and Earlier Judicial Approach

Section 138 proviso (b) requires that the payee or holder in due course make a written demand on the drawer within 30 days of receiving information of dishonor. The drawer is given fifteen days to pay the cheque amount from the date of receipt of the notice under proviso (c) of Section 138. The cause of action to prosecute becomes vested subject to the statutory requirements if payment is not made. The term "giving a notice" has been given a practical interpretation which means that a drawer cannot avoid giving a notice by failing to deliver.

Section 27 of the General Clauses Act, 1897, presumes that a document is served if it is properly addressed, prepaid and posted by registered post, unless there is a contrary intention

[6] *Noorudheen v. State of Kerala*, 2025 SCC OnLine Ker 5597, Para.17-19
[7] Saju v. Shalimar Hardwares, Kattanam, 2025 KHC OnLine 719
[8] *Sainaba*, Para.30, 34-36.

expressed. Section 114 of the Indian Evidence Act, 1872 has also been used to draw appropriate presumptions from the ordinary course of postal business. These are presumptions that may be rebutted[9]. The presumption does not apply when the facts that trigger it are not established, it is not sufficient that a notice was drafted or sent to an address without evidence of proper addressing and posting.

In K. Bhaskaran v. Sankaran Vaidhyan Balan[10], the Supreme Court has clarified that the concept of "giving" notice is not the same as "receiving" notice in the proviso (b). It did so in accordance with the principle in Section 27 of the General Clauses Act, which provides that a notice is presumed to have been served if it is properly addressed, regardless of whether the drawer can prove that it was not served or that he was not responsible for non-service. A notice that is returned unclaimed begins the 15 days. D. Vinod Shivappa v. Nanda Belliappa[11] agreed with this, stating that the cause of action cannot be defeated by the absence of the addressee or locked premises as a dishonest drawer can avoid service.

The most significant case is that of C.C. Alavi Haji v. Palapetty Muhammed[12], which was decided by a three-Judge Bench. It stated that a presumption of service may be created where a notice is sent by registered post to the proper address. It was its opinion that the words "stands complied with" in proviso (b) mean that the proviso is satisfied once the notice is properly addressed, and that it is the drawer's duty to establish that he did not know the notice was brought to his address, that the notice was not tendered or that the postman's report was false. It also noted that in the circumstances mentioned by the Court a drawer who alleges that he has not been served notice may be able to pay the amount of the cheque within fifteen days of receiving summons and the complaint and then argue that the complaint is not maintainable on the ground of non-service. The ruling will deter strategic avoidance and leave a viable payment opportunity.

The Supreme Court in M.D. Thomas v. P.S. Jaleel quashed a conviction in which the accused's wife was given a copy of the notice instead of the accused. It said that service on the wife did not comply with the proviso (b) of Section 138, especially in the facts of the case. The notice was not issued to Alavi Haji, and the decision did not take into account whether the notice was

[9] General Clauses Act, No. 10 of 1897, § 27 (India); Indian Evidence Act, No. 1 of 1872, § 114 (India).
[10] K. Bhaskaran v. Sankaran Vaidhyan Balan, (1999) 7 SCC 510.
[11] D. Vinod Shivappa v. Nanda Belliappa, (2006) 6 SCC 456.
[12] C.C. Alavi Haji v. Palapetty Muhammed, (2007) 6 SCC 555.

properly addressed or whether the wife was living with the drawer. In Noorudheen, the Kerala High Court followed its own judgement in Saju, which was based on M.D. Thomas. Sainaba is able to solve the problem by arguing that M.D. Thomas was per incuriam, and therefore not binding under Article 141 of the Constitution.

4. The Supreme Court's Reasoning in Sainaba

4.1 Correct dispatch and presumed service

The Supreme Court focused on the fact that the notice had been sent by registered post to the accused's correct address. The address was not challenged and was consistently used in the proceedings. In those circumstances, the complainant was entitled to rely on the presumption associated with proper dispatch. The Court did not require separate evidence that the accused personally handled the envelope or actually read its contents[13].

The distinction is between the complainant's initial burden and the accused's evidential burden after the presumption arises. The complainant must establish foundational facts: proper addressing, prepayment and dispatch through the relevant postal method. Once those facts are shown, the law permits service to be presumed. It is then for the accused to place material before the court that rebuts it. The Court found that no such rebuttal had been made in Sainaba[14].

4.2 The shift in the burden of proof

The allocation of the burden of proof is the decision's most noteworthy feature. The High Court effectively required the complainant to prove that the accused had actual knowledge that his mother had received the notice. The Supreme Court held that this approach incorrectly placed the burden back on the complainant after the presumption of service had arisen. In substance, the High Court treated proof of actual knowledge as a necessary part of the complainant's case even though the notice was properly sent to an undisputed address.

The burden does not shift at the outset. It shifts only after the complainant establishes the facts that justify the presumption. Nor does the shift mean that the accused must disprove service beyond reasonable doubt. The accused must produce material capable of rebutting the

[13] *Sainaba*, Para. 31-32.
[14] *Id.* Para. 32, 34-35.

presumption, the court then evaluates that material in the context of the entire record. Evidence that the accused lived elsewhere, that the address was incorrect, that the recipient was not connected to the household, or that the postal record was unreliable may be relevant, depending on the facts. The judgment's point is that actual knowledge need not be affirmatively proved by the complainant in every case once the statutory presumption has been properly triggered.

This approach is consistent with the rationale of Section 138. The notice requirement gives the drawer an important chance to pay, but it should not become a device through which a drawer can avoid the consequences of dishonor by denying personal receipt despite proper dispatch to the correct address. At the same time, because a criminal prosecution may follow, the presumption must remain open to rebuttal and the complainant must still establish the other ingredients of the offence.

4.3 M.D. Thomas treated as per incuriam

The Court held *M.D. Thomas* to be *per incuriam*, meaning a decision given in ignorance of binding precedent. It gave four reasons: the Bench did not notice *Alavi Haji*; it made no finding on whether the address was correct or the wife lived with the drawer; it treated a wife as an unrelated third party; and its rule would give the complainant the presumption when the notice is never delivered but deny it when the notice is delivered to a family member. The Court therefore held that it is not binding under Article 141.

The point should not be overstated. Sainaba does not mean that the factual circumstances in every case involving delivery to a family member are irrelevant. Rather, it rejects the proposition that receipt by a relative automatically defeats service whenever the complainant cannot separately prove the drawer's actual knowledge. The inquiry remains whether the statutory conditions for the presumption were met and whether the accused has rebutted it.

5. Critical Analysis

5.1 Why the decision is doctrinally sound

Sainaba is convincing because it aligns the interpretation of Section 138 with the statutory presumptions governing postal service and with the binding approach in C.C. Alavi Haji. Where the complainant is always required to show actual receipt or actual notice, the drawer can easily evade the notice requirement by saying that an envelope sent to the proper address

was not received. Such a law would make the legal effect of registered post uncertain and could reward avoidance in cases where the address is undisputed.

The Court also correctly considered the difference between having a presumption and deciding a case of service. Presumption is a rule of fact, from which another fact may be inferred, and which cannot be contradicted by any testimony. Correctly addressed and posted notice is good evidence of service, but does not always constitute conclusive evidence in factual circumstances.

5.2 Limits of the presumption and the need for fact sensitive rebuttal

The judgment should not be read to establish that a notice is validly served whenever anyone at an address accepts it. Relevant questions include whether the address was in fact the drawer's correct address, whether the notice was properly posted, the relationship between the recipient and the drawer, whether they lived together, and whether the evidence indicates that the notice was made available to the drawer. In Sainaba, the address was undisputed, the recipient was the accused's mother, and there was no claim of estrangement or separate residence. Those facts made the presumption particularly strong.

A different case may arise where an unrelated security guard or neighbour receives the notice, where the drawer had moved before dispatch, where the envelope was delivered to a different building, or where credible evidence establishes that the recipient had no connection to the drawer. Those circumstances cannot be resolved by mechanically applying Sainaba. They may provide a basis to rebut the presumption, depending on the postal record and the evidence. The decision does not create an exhaustive list of rebuttal grounds or specify a single evidentiary formula for every case.

A clear articulation of this limit is necessary to prevent the presumption from becoming conclusive in practice. The court should first ask whether the complainant has established proper addressing and dispatch. It should then consider the accused's rebuttal evidence, rather than demanding actual-knowledge evidence from the complainant as a universal prerequisite. This sequence respects both the statutory presumption and the accused's right to contest a foundational element of the prosecution.

5.3 Deemed service and the fifteen-day opportunity

C.C. Alavi Haji's observation that a drawer may pay within fifteen days after receiving summons and the complaint is an important practical safeguard. It reduces the incentive to evade the original notice and recognizes that a drawer who genuinely wishes to pay can still do so when the prosecution reaches court. However, the safeguard should not be treated as a complete answer to every dispute about service. A drawer may dispute liability, the amount claimed, or the validity of the cheque rather than simply deny receipt. The opportunity to pay after summons does not eliminate the need for courts to determine whether the original statutory conditions have been satisfied.

The sounder reading is complementary: the presumption of service prevents tactical avoidance, while the fifteen-day opportunity mitigates unfairness where the notice was not actually received. Neither principle should bypass the statutory requirements or presume the existence of a legally enforceable debt merely from postal delivery.

5.4 Implications for precedent

Sainaba also demonstrates the importance of precedent discipline. A decision of a smaller Bench cannot be applied without accounting for a directly relevant ruling of a larger Bench. By treating M.D. Thomas as per incuriam, the Supreme Court has clarified the applicable rule and reduced the scope for inconsistent outcomes among courts dealing with similar service disputes. The decision is useful for trial courts, which frequently encounter challenges based on postal endorsements, delivery to family members and alleged non-receipt.

Future cases should distinguish between the legal rule and its factual application. The legal rule is that proper dispatch to the correct address can raise a rebuttable presumption of service. The factual question is whether that presumption has been rebutted in the particular case. Keeping these questions separate will help prevent both extremes: requiring proof of actual knowledge in every case, and treating any third-party delivery as automatically sufficient.

6. Conclusion

Sainaba v. State of Kerala clarifies that where a demand notice is properly addressed and dispatched to the drawer's correct address, the complainant may rely on the rebuttable presumption of service. The complainant is not ordinarily required to prove separately that the

drawer personally received or read the notice. Once the foundational facts are established, the evidential burden shifts to the drawer to produce material capable of rebutting the presumption. The Kerala High Court erred by requiring proof of the accused's actual knowledge despite the undisputed address and the absence of evidence rebutting service.

The judgment's broader significance lies in restoring consistency with C.C. Alavi Haji and clarifying that M.D. Thomas cannot be followed to impose a universal actual-knowledge requirement. Nevertheless, the presumption must remain rebuttable. Courts should examine the correctness of the address, the mode of dispatch, the identity and relationship of the recipient, and any credible evidence explaining non-receipt. Properly understood, Sainaba balances the purpose of Section 138 with procedural fairness, it discourages deliberate evasion without converting deemed service into conclusive service.