SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Nataraj Vs. K.Dharmaraj

Nataraj Vs. K.Dharmaraj

SooperKanoon Citation : sooperkanoon.com/23

Court : Chennai

Decided On : Jun-07-2011

Judge : R.Mala, J.

Acts : Negotiable Instruments Act - Sections 138, 142

Appeal No. : CRL.R.C.No. 609 of 2009

Appellant : Nataraj

Respondent : K.Dharmaraj

Advocate for Pet/Ap. : Mr.C.S.Saravanan, Adv.

Judgement :
Prayer:- The Criminal Revision is filed under Sections 397 read with 401 of Cr.P.C., to set aside the order of dismissing the complaint under Section 203 of Cr.P.C. dated 17.03.2009 made in 12 Register No.1372 of 2009 on the file of Judicial Magistrate, Dharapuram and to allow the above criminal revision petition.

1.The revision is filed by the petitioner against the dismissal of the private complaint filed under Sections 138 and 142 of Negotiable Instruments Act, stating that the return memo was issued on 03.01.2009, since the statutory notice was issued only on 13.02.2009, which is beyond 30 days from the date of return of the cheque. So the complaint filed by the petitioner was dismissed, against which, the present revision has been preferred by the petitioner/complainant.

2.Heard the learned counsel for the petitioner.

3.On perusal of the record shows that the revision petitioner preferred a private complaint dated 17.03.2009 under Sections 138 and 142 of Negotiable Instruments Act, stating that the respondent herein has borrowed a sum of Rs.10,00,000/- for his family expenses and business purposes on 30.11.2008 and for discharging the same, the respondent issued a cheque bearing No.230101, dated 30.12.2008. When the said cheque was presented in the Bank for encashment on 30.12.2008, it was returned along with the memo dated 03.01.2009 with the reason as Funds insufficient. Thereafter, the petitioner sent a legal notice dated 13.02.2009 to the respondent and the respondent sent a reply notice for the same on 25.02.2009. As per the return memo, it was issued on 03.01.2009, but the legal notice was issued by the petitioner only on 13.02.2009, which is beyond 30 days from the date of return of cheque. So as per Section 138 of Negotiable Instruments Act, the petitioner ought to have issued a prerequisite notice within 30 days from the date of return memo. Since the legal notice was issued by the petitioner beyond the statutory period of 30 days, there is no cause of action for filing the complaint. The trial Court has considered this aspect in proper perspective and dismissed the private complaint.

4.In paragraph-2 of the complaint filed by the petitioner, even though he has stated that the said cheque was returned with the reason as Funds insufficient along with the memo on 23.01.2009 through post, but he neither filed a postal cover nor filed any document to substantiate that the return memo was received by him on 23.01.2009. But the return memo issued by the Bank is dated 03.01.2009. In such circumstances, I do not find any merits in the argument advanced by the learned counsel for the petitioner. Furthermore, I do not find any illegality or infirmity in the order passed by the trial Court. Therefore, the order passed by the trial Court is liable to be confirmed and hence, it is hereby confirmed.

5.In fine,

The Criminal Revision is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com