

H. Mohan and Another Vs. State of Karnataka

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Court : Karnataka

Decided On : Nov-06-1990

Reported in : ILR1991KAR612; 1990(3)KarLJ331

Judge : K. Ramachandraiah, J.

Appeal No. : Criminal Petition No. 1222 of 1990

Appellant : H. Mohan and Another

Respondent : State of Karnataka

Judgement :

K. Ramachandriah, J.

1. Although this criminal petition is listed for admission today, it is disposed of on the merits by consent of learned counsel for the petitioner and the learned High Court Government Pleader and after hearing both of them on the merits.

2. The facts which have given rise to this petition are that the petitioners jointly issued a cheque in favour of the managing partner of Sri Satyanarayana Finance Corporation, Hospet, for a sum of Rs. 60,000 on January 21, 1990, on the State Bank of Mysore, Bazaar branch, Hospet. When presented by the payee, the said cheque came to be dishonoured. Thereafter, the payee issued notice to the petitioners. Some time after the issue of notice to the petitioners, the payee filed a

complaint on February 20, 1990, before the sub-inspector of police, Hospet town police station, for taking necessary action against the petitioner. On the basis of that complaint, a case in Crime No. 62 of 1990 was registered against the petitioners for an offence under section 138 of the Negotiable Instruments Act, 1881, as amended by Act No.66 of 1988, (for short 'the Act'). After completing the investigation, the sub-inspector of Hospet town police station filed a charge-sheet against the petitioners in the court of the J.M.F.C., Hospet, for an offence under section 138 of the Act.

3. Acting on that charge-sheet, the learned Magistrate took cognizance of the offence under section 138 of the Act and ordered registration of a criminal case against the petitioners arrayed as accused in the charge-sheet and directed issue of summons to them on April 16, 1990, calling upon them to appear before him on October 12, 1990. It is the said order of the learned Magistrate that is challenged in this criminal petition.

4. The main contention of the petitioners is that the learned Magistrate had no jurisdiction to entertain and act upon the charge-sheet filed by the police view of the provisions of section 142 of the Act. It reads thus :

'Cognizance of offences. - Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), -

(a) No court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee, or, as the case may be, the holder in due course of the cheque.'

5. It is clear from the language employed in section 142 of the Act that no court shall take cognizance of any offence punishable under section 138 except upon a written complaint made by the payee. It means that the payee has to file a private complaint under section 200, Criminal Procedure Code, before the competent Magistrate and the police are not empowered to act upon a private complaint filed for an offence under section 138 of the Act. I do not find any force in the argument of the learned High Court Government pleader that sections 4 and 5, Criminal Procedure Code, empower the police to entertain the complaint filed in respect of

an offence under section 138 of the Act as the said provisions are not attracted in view of the above-extracted provisions of section 142 of the Act.

6. In the result, the petition is allowed and the entire proceedings in C.C. No. 1001 of 1990 on the file of the Additional J.M.F.C, Hospet, are quashed.

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