

Venu Vs. Krishnappa

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Court : Karnataka

Decided On : Sep-04-1991

Reported in : [1992]74CompCas734(Kar); 1991(3)KarLJ41

Judge : M.M. Mirdhe, J.

Acts : [Negotiable Instruments Act, 1881](#) - Sections 138 and 142

Appeal No. : Criminal Revision Petition No. 130 of 1991

Appellant : Venu

Respondent : Krishnappa

Advocate for Def. : G.G. Shastri, Adv.

Advocate for Pet/Ap. : H.V. Nagaraj Rao, Adv.

Judgement :

M.M. Mirdhe, J.

1. This criminal revision petition is filed under section 397(1) of the Criminal Procedure Code to set aside the order dated December 4, 1990, passed by the Metropolitan Magistrate, IV Court, Bangalore, in Case No. PCR 290 of 1990.

2. I have heard learned counsel for the petitioner and perused the records of the case. Learned counsel for the respondent has remained absent at the time of

hearing of this case.

3. The revision petition is admitted.

4. With the consent of learned counsel for the petitioner, I have heard this matter on merits today.

5. The petitioner filed a complaint under section 200, Criminal Procedure Code, against the respondent alleging that he has committed an offence punishable under section 138 of the Negotiable Instrument Act, 1881.

6. The Magistrate took cognizance and recorded the sworn statement of the complainant and then he dismissed the complaint under section 203, Criminal Procedure Code, on the ground that the complaint was filed on August 21, 1990 which was beyond the period of one month of arising of the cause of action under section 138(c) of the Act. The view taken by the Magistrate is wrong. The cheque was issued by the respondent on June 15, 1990. It is alleged to have been dishonoured on July 7, 1990. The petitioner issued a notice to the respondent on July 9, 1990. The notice is served on the respondent on July 14, 1990. Under section 138(c) of the Act, the respondent has 15 days time to pay the dues. That date would be July 30, 1990. The respondent had time to pay the amount of the cheque on or before July 30, 1990. The petitioner could not have filed any complaint before that date. The respondent had time to pay the amount of the cheque till then. Therefore, the cause of action has not arisen till July 30, 1990. It arose only on July 30, 1990, when, on the expiry of the 15-day period, the respondent did not pay the amount of the cheque and from that date the petitioner had one month's time under clause (b) of section 142 of the Act. The complaint filed by the petitioner is well within time. The Magistrate was wrong in dismissing it as having been filed beyond the period of limitation.

7. Hence, I make the following order :

8. The revision petition is allowed. The order of the Magistrate is set aside. The case is remitted to the learned Magistrate to proceed further in accordance with law.

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