

V. Kishore Vs. S. Ajay Kumar and anr.

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Court : Andhra Pradesh

Decided On : Feb-04-2005

Reported in : 2005(1)ALD(Cri)459; IV(2005)BC138; [2005]127CompCas452(AP); 2005CriLJ2383

Judge : G. Yethirajulu, J.

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

Appeal No. : Cri. A. No. 35 of 2001

Appellant : V. Kishore

Respondent : S. Ajay Kumar and anr.

Advocate for Def. : S. Chandra Sekhar, Adv. for Respondent 1

Advocate for Pet/Ap. : B. Atcghaiah, Adv.

Disposition : Appeal allowed

Judgement :

G. Yethirajulu, J.

1. This appeal is preferred by the complainant in C.C. No. 169 of 1997, on the file of the Judicial First Class Magistrate, Adilabad. The appellant filed a complaint against the respondent-accused for the offence under Section 138 of the

[Negotiable Instruments Act, 1881](#) (for short, 'the Act').

2. The appellant mentioned in the complaint that the respondent-accused took a hand loan of Rs. 1,50,000/- on 4-4-1997 and gave a cheque for discharge of the said amount. He presented the cheque in the bank on 5-4-1997 and it was returned by the bank on 17-4-1997, with an endorsement 'insufficient funds'. Subsequently, the appellant issued a notice to the respondent-accused on 6-5-1997 requiring him to pay the amount covered by the cheque. Therefore, he presented a complaint within the time prescribed under the Act from the date of service of notice. The appellant, in order to prove the offence, examined P.Ws. 1 to 3 and marked Exs. P. 1 to P.6. No oral or documentary evidence adduced on behalf of the respondent-accused. The lower Court dismissed the complaint by finding the respondent-accused not guilty of the offence under Section 138 of the Act and acquitted him through the judgment dated 6-11-2000. The appellant being aggrieved by the judgment of the lower Court preferred the present appeal challenging its validity and legality.

3. The point for consideration is whether the complaint filed by the appellant is barred by limitation and whether the appellant is entitled to get the matter decided on merits.

4. The lower Court acquitted the respondent-accused on the sole ground that the complaint is barred by limitation. The lower Court observed that when the appellant presented the cheque to the bank on 5-4-1997 he was informed by the bank officials immediately that there were no funds in the account of the respondent-accused. The lower Court therefore assumed that the appellant had sufficient knowledge about the insufficiency of the funds in the account of the respondent-accused. Therefore, the limitation starts to run from 5-4-1997. As he waited till 17-5-1997, the date on which the bank served a memo along with the cheque, intimating the appellant about the insufficiency of the funds, the complaint is barred by limitation.

4A. The learned counsel for the appellant submitted that under Proviso (b) of the Act, the appellant is entitled to wait till the receipt of information from the bank regarding the return of the cheque as unpaid and from the date of receipt of the

said intimation, he has to issue notice within the period prescribed under the Act. Therefore, the oral information said to be given by the bank cannot be taken as the date of knowledge and the period of limitation shall not be computed from the date of the oral information. The appellant, as P.W. 1 stated that he presented the cheque to the bank on 5-4-1997 and he received the return endorsement on 17-4-1997. In the cross-examination, he stated as follows :

'On 5-4-1997 itself I presented cheque in the bank of Maharashtra. On the same day itself, the bank people informed me that there are no sufficient amounts.'

5. Basing on the above answer given by PW-1, the lower Court assumed that the limitation started running from 5-4-1997 itself. In this regard, it would be appropriate to refer Section 138 of the Act and it reads as follows :

'Dishonour of cheque for insufficiency, etc., of funds in the account :-- Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment (for a term which may extend to two years), or with fine which may extend to twice the amount of the cheque, or with both :

Provided that nothing contained in this Section shall apply unless--

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier.

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the 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,

and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

6. As per proviso (b) of the Act, the appellant has to issue a notice in writing to the respondent within 30 days of the receipt of the information by him from the bank regarding the return of the cheque as unpaid. The wording of proviso (b) is clearly indicating that the person who presented the cheque is entitled to wait till he receives communication from the bank in writing assigning the reason for dishonouring the cheque. Though it was elicited from PW-1 that he was informed by some bank official that the amount was not available in the account of the respondent, the further details could not be elicited from PW-1 about his complete knowledge of the cause for return of the cheque, if the appellant gives notice in advance without verifying the endorsement of the bank, it is likely to put him in an embarrassing situation and if the endorsement is on a different cause, he would be barred from prosecuting the case, in the light of the above circumstances, the lower Court erred in coming to a conclusion that the oral information given by the bank is a sufficient notice to the appellant and the limitation starts to run from that day, i.e., the date of presentation of the cheque, I find sufficient force in the contention of the appellant, therefore, I am inclined to set aside the judgment of the lower Court dated 6-11-2000 with a clarification that the limitation will not start to run on the oral information from the bank.

7. In the result, the appeal is allowed. The judgment of the Judicial First Class Magistrate, Adilabad dated 6-11-2000, passed in C.C. No. 169 of 1997 is set aside by holding that the complaint is not barred by limitation. The matter is remitted back to the Judicial First Class Magistrate, Adilabad for fresh disposal, on merits, after giving opportunity to both parties.