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**Valishetty Manohar Vs. Public Prosecutor, High Court of A.P. and anr.**

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**SooperKanoon Citation : [sooperkanoon.com/445271](http://sooperkanoon.com/445271)**

**Court : Andhra Pradesh**

**Decided On : Mar-30-2005**

**Reported in : 2005(1)ALD(Cri)805; III(2006)BC479**

**Judge : G. Yethirajulu, J.**

**Acts : [Negotiable Instruments Act, 1881](#) - Sections 138, 142 and 148; Code of Criminal Procedure (CrPC) - Sections 255(1); Indian Penal Code (IPC) - Sections 420**

**Appeal No. : Criminal Appeal No. 686 of 2002**

**Appellant : Valishetty Manohar**

**Respondent : Public Prosecutor, High Court of A.P. and anr.**

**Advocate for Def. : Public Prosecutor for Respondent No. 1; Bathini Paparao Goud, Adv. for Respondent No. 2**

**Advocate for Pet/Ap. : Serla Pandari, Adv.**

**Disposition : Appeal allowed**

**Judgement :**

**G. Yethirajulu, J.**

1. This is an appeal preferred by the complainant in C.C. No. 779 of 2001 on the file of the Special Judicial Magistrate of 1st Class (for Prohibition and Excise Offences) Nalgonda, against the judgment of the said Court dated 19.4.2002 ordering acquittal of the accused for the offence punishable under Section 138 of the Negotiable Instruments Act.

2. The appellant filed a complaint under Section 138 read with Section 148 of the Negotiable Instruments Act and under Section 420, IPC against the 2nd respondent herein.

The appellant contended that on account of the previous acquaintance, the 2nd respondent approached the complainant on 9.5.1999 for a hand loan of Rs. 1, 00, 000/- for his family necessities and he provided the said loan and obtained Ex. P-1 promissory note. Subsequently, when the appellant demanded the 2nd respondent for payment of the amount, he postponed the same and ultimately, on 28.12.1999, the 2nd respondent issued a cheque bearing No. 524508 to be drawn on State Bank of India Amberpet Branch, Hyderabad for discharge of the loan. The appellant presented the said cheque in State Bank of Hyderabad, Prakasam Bazar, Nalgonda and, ultimately, the cheque was returned with a memo dated 22.4.2000 that the funds were not sufficient to honour the cheque. The appellant issued a legal notice on 5.5.2000 through certificate of posting to the 2nd respondent informing about the dishonour of the cheque and demanding to pay the amount covered by the cheque. The 2nd respondent, instead of making the payment, gave a reply-denying the loan. The appellant, after receipt of reply, filed a complaint on 21.6.2000 against the 2nd respondent.

3. The appellant, in order to prove the offence against the 2nd respondent, examined P.Ws. 1 to 3 and marked Exs. P-1 to P-6. On the contrary, the 2nd respondent examined D.Ws. 1 to 3 and marked Exs. D-1 to D-3.

4. After conclusion of the trial, the lower Court held that the 2nd respondent issued the cheque towards the discharge of a legally enforceable debt, that the notice covered by Ex. P4 was a proper notice and that the alterations made in Ex. P2 cheque are not fatal, to the complainant. The lower Court, ultimately, by holding that the complaint is barred by limitation, found the 2nd respondent not guilty of

the offence punishable under Section 138 of Negotiable Instruments Act and acquitted him under Section 255, Cr. P.C. The appellant being aggrieved by the judgment of the lower Court, preferred this appeal challenging its validity and legality.

5. The only point that remains for consideration is:

Whether the complaint preferred by the appellant was within the period of limitation and whether the judgment of the lower Court acquitting the 2nd respondent for the offence punishable under Section 138 of the Negotiable Instruments Act is liable to be set aside?

The appellant after receipt of the cheque from the 2nd respondent presented the same to the concerned Bank and it was returned with an indorsement 'insufficient funds' on 22.4.2000. The appellant sent a legal notice on 5.5.2000 to the 2nd respondent under certificate of posting and it was received by the 2nd respondent on 6.5.2000. The 2nd respondent gave a reply covered by Ex. P-6 denying the transaction and the liability. Since the legal notice was received by the 2nd respondent on 6.5.2000, the appellant calculated the time of 15 days from 7.5.2000 and after expiry of 15 days time, the limitation for filing the complaint, started from 22nd May, 2000. The appellant, by taking into consideration of the period of one month provided under Section 142 of the Negotiable Instruments Act, presented the complaint on 21.6.2000. The lower Court by observing that within the period of 45 days for the time provided for the payment of the amount and 30 days for filing the complaint, one day cannot be excluded on two occasions and if only one day is excluded, for the entire period of 45 days, the complaint was expected to be filed on 20th June, 2000 and as it was presented on 21.6.2000, it is barred by limitation.

6. The learned Counsel for the appellant submitted that under Section 142 of the Negotiable Instruments Act, the limitation of one month has been provided for presentation of the complaint and the Supreme Court of India while interpreting the period mentioned in Section 142 of the Negotiable Instruments Act held that the Court has to calculate the period of limitation by taking one month's period provided under the Act and cited the following decisions in support of his

contention.

In *M/s. Saketh India Ltd. and Others v. India Securities Ltd.* : 1999 CriLJ1822 it is held that:

Ordinarily in computing the time, the rule observed is to exclude the first day and to include the last. Applying to the said rule, the period of one month for filing the complaint under Section 138 against dishonour of cheque will be reckoned from the day immediately following the day on which the period of 15 days from the date of the receipt of notice by the drawer, expires. Thus, where period of 15 days, in the present case, expired on 14th October, 1995 cause of action for filing complaint could arise from 15th October, 1995 and that day (15th October) was to be excluded for counting the period of one month and consequently complaint filed on 15th November, 1995 would be within time.

In *Sil Import, USA v. Exim Aides Silk Exporters* : 1999 CriLJ2276 , it is held that as per Clause 'C' of Section 138 of the Negotiable Instruments Act, the starting date is the date of 'receipt of notice', Once the period starts, the offence is completed on the failure to pay the amount within 15 days therefrom. Therefore, the cause of action would arise if the offence is committed.

7. In a case covered by the above decision, this Court expressed a view that the sender of the notice must know the date when it was received by the sendee. Otherwise, he would not be in a position to count the period in order to ascertain the date when the cause of action has arisen. The Supreme Court observed that if a different interpretation is given, the absolute interdict incorporated in Section 142 of the Act that no Court shall take cognizance of any offence unless the complaint is made within one month of the day on which the cause of action arises, would become otiose.

8. In the present case, consequent upon failure to pay the money within a period of 15 days as envisaged under Clause 'C' of the proviso to Section 138 of the Negotiable Instruments Act, the liability of the drawer for being prosecuted for the offence he has committed, arises and the period of one month for filing complaint under Section 142 is to be reckoned accordingly. A combined reading of the above

two sections of the Act, leaves no room for doubt that cause of action within the meaning of Section 142 of the Negotiable Instruments Act arises and can arise only once.

9. In the light of the above legal proposition, the calculation of the period of limitation by the lower Court is wrong and after working out the total period, it is noticed that the filing of the complaint on 21.6.2000 was within time.

10. I am, therefore, inclined to set aside the judgment of the lower Court dated 19.4.2002 and the acquittal of the 2nd respondent for the offence under Section 138 of the Negotiable Instruments Act on the ground that the complaint was barred by limitation, is set aside.

11. In the result, the appeal is allowed and the judgment of the lower Court dated 19.4.2002 is set aside. The matter is remitted back to the lower Court for giving a judgment on merits by treating that the complaint was within time, after giving opportunity to both parties.

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