

Dr. Kanchana Kamalanathan Vs. Nagaraj

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Court : Chennai

Decided On : Apr-22-1994

Reported in : [1995]84CompCas959(Mad)

Judge : Pratap Singh, J.

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

Appeal No. : Criminal Original Petition No. 5423 of 1993

Appellant : Dr. Kanchana Kamalanathan

Respondent : Nagaraj

Advocate for Def. : V. Gopinath, Adv.

Advocate for Pet/Ap. : M. Shakir Ali, Adv.

Judgement :

Pratap Singh, J.

1. The accused in C.C. No. 15 of 1993 on the file of the Chief Judicial Magistrate, Krishnagiri, has filed this petition under section 482 of the Criminal Procedure Code, 1973, praying to call for the records in the above case and quash the same.

2. The short facts are : The respondent has filed a complaint against the petitioner for an offence under section 138 of the Negotiable Instruments Act (hereinafter

referred to as 'the Act') and the allegations in it are briefly as follows :

As per the request made by the accused, the complainant paid Rs. 15,000 on April 15, 1992, as a loan to the accused. The complainant demanded this amount from the accused in June, 1992. Thereupon the accused issued a cheque for Rs. 15,000 on June 16, 1992, in favour of the complainant. The complainant presented the cheque on June 24, 1992, for collection. It had been returned dishonoured for the reason 'not arranged for' and 'property not marked' by bank memo dated June 24, 1992. The complainant informed the accused about the above fact on November 15, 1992. The complainant met the accused and requested to pay the above loan amount in cash and take back the cheque. The accused asked the complainant to present the cheque and assured that she will make arrangements to honour the cheque. Accordingly, the complainant presented the cheque dated June 16, 1992, on November 17, 1992, for collection. But this time also the cheque had been returned dishonoured with the endorsement 'not arranged for' and 'property not marked' by memo dated November 17, 1992. The complainant issued a notice on December 4, 1992, to the accused calling upon her to repay the amount in cash along with collection charges. The accused had received the notice on December 5, 1992. The accused had not paid the amount. Hence, the complaint.

3. Mr. Shakir Ali, learned counsel appearing for the petitioner, would submit that this complaint has been made within fifteen days of the date of the statutory notice and hence it is invalid and liable to be quashed. I have heard Mr. Gopinath, learned counsel appearing for the respondent on the above aspect. I have carefully considered the submissions made by learned counsel. To consider the submissions, the relevant allegations in the complaint need be stated. In para 4 of the complaint, it is stated that the notice was sent by the complainant, after the dishonour of the cheque, calling upon the accused to pay the cheque amount and other charges received by the accused on December 5, 1992. This complaint for an offence under section 138 of the Act was filed in the court on December 16, 1992, i.e., within fifteen days from December 5, 1992, the date on which the accused had received the statutory notice sent by the complainant.

4. I shall presently refer to the relevant provisions in section 138 of the Act. Clause (c) of the proviso to section 138 reads as follows :

'(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.'

Clause (b) of section 142 reads as follows :

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

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138.'

5. A reading of clause (c) of the proviso to section 138 and clause (b) of section 142 would show that the cause of action for a complaint for an offence under section 138 of the Act arises only after the expiry of fifteen days from the date of the statutory notice. In the instant case, the complaint having been filed by the complainant before the expiry of the said fifteen days, it is apparent that it was filed before the cause of action had arisen. Hence, it is infirm and liable to be quashed.

6. In the result, the petition is allowed and all further proceedings in C.C. No. 15 of 1993 on the file of the Chief Judicial Magistrate, Krishnagiri, shall stand quashed.

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