SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Kiran Vs. Anand and Others

Kiran Vs. Anand and Others

SooperKanoon Citation : sooperkanoon.com/935285

Court : Karnataka Dharwad

Decided On : Jan-19-2011

Reported in : 2011ILR(Kar)623; 2011(6)KantLJ558; 2012CrLJ590

Judge : Anand Byrareddy

Appeal No. : Criminal Revision Petition No.2058 of 2008

Appellant : Kiran

Respondent : Anand and Others

Advocate for Pet/Ap. : For the Petitioner: Shivraj P. Mudhol, Advocate. For the Respondents: R1, R2, N.L. Batakurki, R3, Vinayak, Advocates, S. Kulkarni, GP.

Judgement :

Heard the Counsel for the petitioner and the Learned Counsel for the respondent.

2. The petitioner was a complainant who had initiated proceedings under Section 200 of the Code of Criminal Procedure, for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881, against the respondent herein. The proceedings were contested by the respondents. The Court below, on the allegation of the complainant that the complainant-petitioner had business transactions with the respondents, who were a partnership firm engaged in dealing with tarpaulins and that the respondent herein had approached him for a loan and it was granted to him. On default of payment, a demand was made by the

petitioner and in consideration of discharge of the loan, the respondent herein had issued a cheque for Rs.50,000/- dated 30.6.2001. The said cheque, when presented to the Banker of the petitioner, the same was returned on 31.12.2001 with an endorsement by the Banker of the respondent as follows: `refer to drawer'. It is in this background, that a legal notice was issued for the alleged offence and proceedings were initiated against the respondents. Ultimately, the Court of Magistrate held that the offence was established and convicted the respondent and sentenced him to undergo simple imprisonment for a period of one year and further to pay a fine of Rs.3000/-, and in default to undergo further simple imprisonment for three months, and also directed the accused to pay compensation of Rs.65,000/- to the complainant.

3. The same was challenged in appeal before the Court of Fast Track Court, Jamakhandi. The Appellate Court, on the question, whether the cheque was presented within the period of six months, as prescribed under Section 138 of the Negotiable Instruments Act, held that the cheque dated 30.6.2001, having been presented according to the endorsement on the cheque on 31.12.2001, was beyond six months and therefore, there was no criminal liability on dishonor of the cheque and therefore, held that the offence was not made out and the appeal was allowed. It is this order, which is questioned in the present petition.

4. The point that arises for consideration is, whether the Appellate Court was justified in holding that the cheque was presented for realization, beyond six months.

5. The Learned Counsel for the petitioner would seek to contend, that the period of six months contemplated under the Act would mean six calendar months and not necessarily the number of days of a month. The cheque having been presented on the last day of the sixth month from the month in which the cheque was drawn, it would have to be construed that the same has been presented within six months calculated from 30.6.2001.

6. The Learned Counsel for the respondent, on the other hand, would submit that a "month" would have to be construed as coming to a close on the 29th of the next succeeding month from the date of cheque, namely, 30.6.2001. It is contended

that this is the manner in which a month can be calculated in respect of a cheque, which can be issued on different dates of a month and therefore, would submit that the cheque is well beyond two days after the end of the sixth month in the instant case. If so construed, and hence, the contention that the last day of the month ought to be taken as the period within which the cheque ought to have been presented, is an incorrect construction of the requirement of the presentation of the cheque within a period of six months. It is this controversy that requires to be resolved, namely, the manner in which the period of six months is to be construed.

7. In so far as Section 138 of the Negotiable Instruments Act is concerned, it contemplates that nothing contained in the Section would apply unless 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. It is not explained as to how “six months” are to be construed.

8. From a reference to the General Clauses Act, 1897, a month is defined under sub-Section (35) of Section 3 thus:

“Month” shall mean a month reckoned according to the British Calendar”

There is no clue as to what a British Calendar is. A reference to the Oxford English Dictionary II Edition, 2005, British Calendar is not included, but, however, a Calendar is defined. There again, there is no reference to the British Calendar. In so far as a `month’ is concerned, the said dictionary defines the word `month’ as follows:

“Month” (Calendar month): Each of the twelve named periods into which a year is divided:

A period of time between the same dates in successive calendar months.

It is also defined as a period of 28 days or 4 weeks. (Emphasis supplied)

9. Going by these definitions, the safest definition that can be adopted is, “the period of time between the same dates in successive calendar months”.

10. Accordingly, if the calendar month is to be construed as the period between same dates of successive months, in the instant case, the period between June 30 and July 30 is the calendar month. The month would end on July 29. This would mean that the cheque should be presented on or before 29th July. So construed, the six months period would expire, in the instant case, on 29.12.2001. There is no dispute that the cheque has been presented by the petitioner on 31.12.2001. Therefore, the cheque has been presented well beyond six months and hence, the Appellate Court was justified in holding that there was a delay in presentation of the cheque and therefore, no criminal liability arise on account of the dishonor of cheque.

11. The Learned Counsel for the petitioner also contends, that the last date of the month on which it is presented ought to be excluded. Even if such a contention is accepted, since the cheque is presented on 31.12.2001, such a contention may not be available to the petitioner since he would then have been required to present the cheque on 30.12.2001. This is not so, nor is it contemplated under the provisions of the Negotiable Instruments Act. The Learned Counsel apparently seeks to draw inspiration from the provisions of the Limitation Act, 1963, which contemplates such a situation in filing of cases.

12. Reference made to Section 25 of the Negotiable Instruments Act cannot also be pressed into service. Section 25 reads as follows:

“25. When day of maturity is a holiday,- When the day on which the promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day.

Explanation,- The expression “Public Holiday” includes Sundays and any other day declared by the Central Government by Notification in the Official Gazette, to be a public holiday”.

The tenor of this Section would indicate that, it refers to the presentation of bill of exchange on its maturity, and when it becomes due and it does not refer to the expiry of the period within which the cheque can be presented for collection. Therefore, the same cannot be pressed into service in justifying the argument that

the day on which the cheque is presented ought to be excluded.

13. Hence, the contentions of the petitioners are not tenable and accordingly, the petition stands dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com