

(1990) 03 AP CK 0028

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 749 of 1990 and Criminal Miscellaneous Petition No. 1141 of 1990

Mahalakshmi Enterprises and Another

APPELLANT

Vs

Sri Vishnu Trading Co. and Another

RESPONDENT

Date of Decision : 25-03-1990

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138, 142

Citation : (1991) 1 ALT 22 : (1990) 2 APLJ 463 : (1993) 77 CompCas 249

Hon'ble Judges : Bhaskara Rao, J

Bench : Single Bench

Advocate : Public Prosecutor, for the Appellant; T. Bali Reddy, for the Respondent

Judgement

Bhaskara Rao, J.—The question that arises for consideration in this case is when the limitation starts u/s 142(b) of the Negotiable Instruments Act, 1881, to file a complaint for the offence committed u/s 138 of the said Act ?

2. The facts of the case are :

The respondents herein filed a complaint u/s 138 of the Negotiable Instruments Act on the ground that the cheque dated July 16, 1989, issued for Rs. 15,260 by the petitioner was dishonoured on July 24, 1989. In view of the dishonour, the respondents issued a notice to the petitioner on August 20, 1989, which was received by the present petitioner on August 24, 1989. It was on September 5, 1989, the respondents filed the petition before the court below complaining of the offence u/s 138(c) of the Act. The court below dismissed the complaint on the ground that it is barred by limitation.

3. Section 138(c) of the Act reads as follows :-

"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 one year, 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

(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."

4. As per the above section, there is fifteen days" time for payment of the amount due under the cheque from the date of receipt of notice regarding dishonour issued by the payee. Therefore, the respondents have to wait for fifteen days anticipating payment of the amount by the petitioner. After expiry of the said fifteen days, if the petitioner did not pay the amount, cause of action starts from the 16th day onwards. The limitation to file a complaint as prescribed u/s 142(b) of the Act is one month. The period of limitation, therefore, starts from the 16th day after receipt of notice by the petitioner.

5. In this case the notice was received by the petitioner on August 24, 1989, and, thereafter, he is having time to pay the amount within fifteen days, The limitation starts from the date of the expiry of fifteen days, viz., from September 9, 1989, the sixteenth day. The complaint in this case was filed on September 5, 1989, even before starting of limitation, which, therefore, is within limitation. I, accordingly, see no grounds to quash the said proceedings. The petition is dismissed.

6. It is open to the petitioner to file a petition to dispense with his presence in the court below, and on such filing, the court below will consider the same.