

Andhra High Court

S.B.V. Satyanarayana Rao vs A. Venkateshwar Rao And Anr. on 3 August, 1995

Equivalent citations: 1996 (1) ALT Cri 111, 1997 88 CompCas 469 AP

Author: R M Bapat

Bench: R Bapat

JUDGMENT Ramesh Madhav Bapat, J.

1. This is an appeal filed by the complainant being aggrieved by the order of acquittal recorded by the learned XIth Metropolitan Magistrate, Secunderabad, in C.C. No. 349 of 1992 acquitting the accused of an offence punishable under section 138 of the Negotiable Instruments Act, 1881 (for short "the Act").

2. It can be seen from the record that the complainant had filed a complaint against the accused for an offence punishable under section 138 of the Act. Before filing the complaint, he had issued a notice to the first respondent-accused. The postman had left the intimation at the address of the accused instructing him to collect the registered notice meant for him within a period of seven days. In spite of leaving the intimation at his door, the accused did not claim the notice and, therefore, the complainant filed the complaint when he received back the envelop addressed to the accused which was not claimed by him. Instead of waiting for a period of 15 days, the complainant proceeded to file the complaint within 13 days and thus it appears from the judgment of the learned Magistrate that he dismissed the complaint on the technical ground that the complainant did not wait for 15 days after refusal of the notice, sent by him to the accused.

3. The point agitated before me is from what date the 15 days time is to be counted. In the present case, notice was sent by the complainant on June 24, 1992. The said notice was not accepted by the party as he was absent for seven days and, therefore, the envelop was returned by the postal authorities with an endorsement " party seven days absent" on July 7, 1992. Learned counsel for the complainant submitted at the Bar that the 15 days time has to be counted from the first date on which the postman had gone to the address of the accused and not from the last date on which the accused was supposed to claim the notice from the postal authorities. However, I am not inclined to accept the submission made by learned counsel for the appellant. As per the law, the accused was entitled to claim the notice from the postal authorities as per their intimation even on the seventh day or any other day within the period of seven days. The starting point of limitation has to be counted from the date on which the accused receives the notice or the date on which the accused can receive the notice. In the present case, the complainant made unnecessary haste in filing the complaint two days earlier.

4. Admittedly, the prosecution under section 138 of the Act is highly technical. The complainant or the person in whose favour the cheque is issued, is given right to file the prosecution against the person issuing the cheque. As a matter of fact, by incorporating section 138 of the Act, the complainant's civil right to recover the money from the accused is given an opportunity to file the prosecution. In that event, all the technical formalities as laid down under section 138 of the Act and other sections of law have to be strictly complied with failing which the complainant is not entitled for remedy in criminal courts. Under such circumstances, I hold that the order of acquittal recorded

by the learned XIth Metropolitan Magistrate against accused-respondent No. 1 is perfectly legal and justified and no interference is required at the hands of this court. Hence, the criminal appeal is dismissed.