APHC010025052009

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3560]**
(Special Original Jurisdiction)

TUESDAY, THE 8th DAY OF SEPTEMBER 2026

PRESENT

THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA

CRIMINAL REVISION CASE NO: 1053/2009

Between:

1. DARAPANENI SIVA PRASAD,, S/O. CHENNAKESAVA RAO, PROPRIETOR, SAROJINI FILMS, R/O. ARUNDELPET, GUNTUR

...PETITIONER

AND

1. THE STATE OF A P REP BY PP AND ANOTHER, REP BY PUBLIC PROSECUTOR, HIGH COURT OF A.P., HYDERABAD.
2. PODA NEELIMA, W/O. P.V.SREENIVASA RAO, SANGADIGUNTA, GUNTUR , GUNTUR DISTRICT.

...RESPONDENT(S):

Revision filed under Section 397/401 of CrPC praying that in the circumstances stated in the affidavit filed in support of the CriminalRevisionCase, the High Court may be pleased toto prefer this Criminal Revision Case before this Hon'ble Court being aggrieved by the Judgment dt.30.6.2009 made in Crl.A.No. 383/2008 on the file of the court of the IV Addl. Sessions Judge, Guntur in confirming the Judgment dt.03.12.2008 in CC.No. 606/2007 on the file of the VI Addl. Junior Civil Judge, Guntur

IA NO: 1 OF 2009(CRLRCMP 1442 OF 2009

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to enlarge the petitioenr on bail by suspending the execution of sentence passed in Judgmet dt.30.6.2009 made in Crl.A.No. 383/2008 on the file of the Court of the IV Addl. Sessions Judge, Guntur in confirming the Judgment

dt.03.12.2008 in CC.No. 606/2007 on the file of the VI Addl. Junior Civil Judge, Guntur pending disposal of the main Crl.RC

Counsel for the Petitioner:

1. HARINADH NIDAMANURI

Counsel for the Respondent(S):

1. PUBLIC PROSECUTOR

THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA

Criminal Revision Case No:1053 of 2009

The Court made the following Order:

The instant Criminal Revision Case has been preferred against the judgment dated 30.06.2009 passed in Criminal Appeal No.383 of 2008 on the file of the Court of the learned IV Additional Sessions Judge, Guntur, in confirming the judgment dated 03.12.2008 in C.C No.606 of 2007 by the learned VI Additional Junior Civil Judge, Guntur.

2. The brief facts of the case are that respondent No.2 herein lodged a complaint before the learned Jurisdictional Magistrate against the petitioner for commission of offence under Section 138 of the Negotiable Instruments Act, 1981 (for short "the Act").

3. Brief complaint of the respondent No.2 before the learned Trial Court is that the accused/petitioner borrowed an amount of Rs.3,00,000/- from the complainant on 07.10.2004 and executed a promissory note on the same day in her favour agreeing to repay the same with interest @ 24% p.a. On repeated demands, the accused issued a cheque for an amount of Rs.3,73,950/- on 20.02.2006, after calculating interest @ 18% p.a., drawn on H.D.F.C. bank. On its presentation on the same day in Punjab National Bank, Guntur, for collection, it was returned on 22.02.2006 with an endorsement "insufficient funds". The complainant issued a legal notice on 03.03.2006 to the accused intimating dishonour of cheque and also demanded to make the

payment. Accused replied demand notice denying enforceable debt, but no amount has been paid. Hence, the complaint.

4. After hearing the parties, learned Trial Court found that the petitioner/accused to be guilty for the offence punishable under Section 138 of the Act and sentenced him to undergo simple imprisonment for a period of six months and also a fine of Rs.1,000/- in default to suffer simple imprisonment for one month. Such order of conviction was under challenged before the learned Appellate Court, but it was dismissed for confirming conviction. Hence this revision.

5. Learned counsel for the petitioner submits that Trial Court as well as learned Appellate Court has failed to appreciate the facts and circumstances of this case. The petitioner being accused has discharge of his liability by rebutting statutory presumption. It is further submitted that accused has produced three witnesses as DWs.1 to 3 and also placed documents marked as Exs.D1 to D7 before Trial Court. He submits that those documents were not properly considered by the learned Trial Court as well as learned Appellate Court, hence the order of conviction is illegal and improper.

7. In support of this contention, learned counsel cited a decision of the Hon'ble Apex Court in **Vijay Vs. Laxman and another** reported in (2013) 3 SCC 86, wherein it was held as under:

> "14. Thus, we are of the view that although the cheque might have been duly obtained from its lawful owner i.e. the

respondent-accused, it was used for unlawful reasons as it appears to have been submitted for encashment o a date when it was not meant to be presented as in that event the respondent would have had no reason to ask for a loan from the complainant if he had the capacity to discharge the loan amount on the date when the cheque had the capacity to discharge the loan amount on the date when the cheque had been issued. In any event, it leaves the complainant's case in the realm of grave doubt on which the case of conviction and sentence cannot be sustained.

…
…

20. The High Court has rightly accepted the version given by the respondent-accused herein. We say so for reasons more than one. In the first place the stor of the complainant that he advanced a loan to the respondent-accused in unsupported by any material leave along any documentary evidence that any such loan transaction had even taken place. So much so, the complaint does not even indicate the date on which the loan was demanded and advanced. It is blissfully silent about these aspects thereby making the entire story suspect. We are not unmindful of the fact that there is a presumption that the issue of a cheque is for consideration. Sections 118 and 139 of the Negotiable Instruments Act make that abundantly clear. That presumption is, however, rebuttable in nature. What is most important is that the standard of proof required for rebutting any such presumption is not as high as that required of the prosecution. So long as the accused can make his version reasonably probable, the burden of rebutting the presumption would stand discharged. Whether or not it is so in a given case depends upon the facts and circumstances of that case. It is

> trite that the courts can take into consideration the circumstances appearing in the evidence to determine whether the presumption should be held to be sufficiently rebutted. The legal position regarind the standard of proof required for rebutting a presumption is fairly well settled by a long line of decisions of this Court."

8. Learned Assistant Public Prosecutor submits that the learned Trial Court has categorically recorded the evidence of DWs and also verified the evidentiary value of exhibits produced by petitioner/accused being Exs.D1 to D7. He further submits that there is no illegality or infirmity in the impugned order of conviction. He submits that the learned Trial Court as well as the learned Appellate Court has correctly opined that the presumption which is in favour of holder of the cheque i.e., the complainant under Sections 118 and 149 of the Act has not been rebutted by the accused.

9. Heard learned counsel for the parties and perused the material placed on record.

10. From the entire materials on record as well as the evidence both oral and documentary, it appears that the accused/petitioner has not denied the execution of his signature over the cheque, but he stated that cheque was given to the maternal uncle of the accused namely K.Sankar Rao, who had business transactions with petitioner/accused. It is contended that the accused originally being film distributor of a movie which was screened in "Pallavi theater" owned by K.Sankar Rao being lessee and in that regard, he

had advanced an amount of Rs.1,50,000/- to the producer through accused. Producer paid an amount of Rs.1,25,000/-, a balance of Rs.23,000/- was due from the producer. Therefore, the accused being mediator cum distributor, agreed to collect the said balance amount of Rs.23,000/- from the producer and in turn pay the same to K.Sankar Rao. In that regard, the said K.Sankar Rao has taken a blank signed pronote and cheque from the accused towards security. It is further case of the accused that the after demise of K.Sankar Rao, who was complainant's maternal uncle, complainant has filled up the blank cheque and pronote with inflated amount. Thereafter lodged false case under Section 138 of the Act.

11. In support of that contention accused/petitioner has relied upon Ex.D1-letter issued by K.Sankar Rao, Ex.D3-confirmation slip and Ex.D5-letter. By relying upon those documents and also after examination of DWs.2 and 3 as witnesses, the accused intent to prove the business transaction between K.Sankar Rao and himself. Cross-examination, PW.1 was placed before this Court.

12. On thorough perusal of cross-examination of PW.1, it appears that PW.1 has clearly admitted accused used to visit premises of her paternal uncle namely, K.Sankar Rao. The complainant has also admitted the letter pad of K.Sankar Rao, which was marked as Ex.D1. The complainant during cross-examination has also admitted that on the backside of the cheque,

(marked as Ex.P2), it was mentioned, KSR, 06.03.2006, she admitted that K.S.R. means it is her paternal uncle namely K.Sankar Rao.

13. During her cross-examination, she admitted that as per letter, Ex-D5, the cheque is issued to her paternal uncle.

14. In considering the legality and illegality of the order of conviction vis-a-vis, statutory presumption which is in favour of holder of the cheque/complainant, this Court has to look into “Whether the petitioner being accused has successfully discharged his liability by rebutting statutory presumption?”

15. In a complaint under Section 138 of the Act, as per the provisions of under Section 118(a) and Section 139 of the said Act, there is always a presumption in favour of the holder of the cheque i.e., complainant to say that the cheque was issued to discharge illegally enforceable debt; it is trite law that such presumption is always rebuttable in nature.

16. The legal position regarding standard of proof required for rebuttal of such presumption is “preponderance of probabilities”. So, in a case under Section 138 of the Act, when the complainant has successfully proved that the cheque was dishonoured by the banker due to insufficient funds then the onus is upon the accused to rebut the presumption that he had no legally enforceable debt. In this particular case, from the beginning, by replying legal notice, accused stated that there was business transaction between the

petitioner and material uncle of complainant namely K.Sankar Rao. From the evidence of PW.1, DWs.1 to 3 as well as documents marked as Exs.D1 to D7, existence of business transaction i.e., business of distribution of movie by Accused and screened in Pallavi theater owned by K.Sankar Rao has been sufficiently proved. There is no *iota* of doubt that the accused and K.Sankar Rao had a business transaction of running and screening movies at Pallavi theatre; it has also been proved that the accused/petitioner being a mediator as contacted with K.Sankar Rao to screen the movie. There is no evidence to show any business transaction to the petitioner and the complainant. It is further case of accused that he issued a blank cheque and pronote in favour of K.Sankar Rao, which was later converted by the complaint to file this case.

17. During cross-examination, PW.1/complainant, admitted that the color of the ink in the signatures of Exs.P1 and P2 are different to the writings of those documents. It further appears that Ex.D5-Office copy of letter by accused to K.Sankar Rao to return the blank signed pronote and cheque is also on record.

18. After scanning entire evidence of Exs.D1 to D7 simultaneously, the evidence of DWs.1 to 3 as well as cross-examination of PW.1, it appears that the petitioner has successfully discharged the onus upon him by rebutting statutory presumption. Both oral and documentary evidence are proble to support defence case. After rebuttal of such presumption, it is the duty of the complainant to show that the cheque amount of Rs.3,73,950/- was issued by

the petitioner on 22.02.2006 to discharge the borrowed amount of Rs.3,00,000/- but the petitioner failed to discharge the said legal burden.

19. The learned Trial Court as well as the learned Appellate Court has decided the issue bypassing the entire factum and entire procedure of law established by the Hon'ble Apex Court several times. The law regarding rebuttal of presumption requires to be proved on preponderance of probabilities. In this particular case, the petitioner being accused has successfully rebutt the presumption. Learned Trial Court and as well as learned Appellate Court has failed to assess the legal and probative value of evidence on record, thereby, order of conviction of sentence appears to be illegal and improper.

20. I find there is merit in the instant criminal revision case, accordingly, the same is allowed. The order of conviction of sentence passed by the learned Trial Court confirmed by the learned Appellate Court is set aside. The petitioner being the accused in the case is acquitted and he will be set at liberty.

Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE SUBHENDU SAMANTA

Date:08.09.2026
Ksj/DS

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THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA

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Date:08.09.2026
Ksj/DS