

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**FRIDAY, THE TWENTY NINTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY THREE**

PRESENT

THE HONOURABLE SRI JUSTICE E.V. VENUGOPAL

CRIMINAL REVISION CASE NO: 552 OF 2012

Criminal Revision filed under Section 397 and 401 of Cr.P.C., against the judgment dated 31.01.2012 made in Criminal Appeal No.23 of 2011 on the file of the II Additional District and Sessions Judge (F.T.C) at Sangareddy, confirming the Judgment dated 03.02.2011 in CC.No.262 of 2009 on the file of Judicial First Class Magistrate Cum Special Mobile Court, Sangareddy.

Between:

M.Nageswara Rao, S/o. M.Pochaiah, aged 39 years, Occupation Business, R/o. H.No 6-71, Kummari Basthi, Patancheru Town and Mandal, Medak.

...PETITIONER

AND

1. Sri Krishna Constructions Rep., by its Managing Director, K.Krishna Prasad S/o. K.Rattaiah, aged 48 years, occupation: Business, R/o. H.No 2-53/8/1, Plot No.30, 1st Floor, Laxmi Enclave, Gachibowli, Serilingampally Mandal, Ranga Reddy District.

RESPONDENT/RESPONDENT/ACCUSED

2. The State of Andhra Pradesh, rep., by its Public Prosecutor, High Court Buildings, High Court of Andhra Pradesh, Hyderabad.

...RESPONDENT

Counsel for the Petitioner: Sri P Venkat Reddy

Counsel for the Respondent no.1: Sri Venkateswara Rao Gudapati

**Counsel for the Respondent no.2: Sri Vizarath Ali,
ASSISTANT PUBLIC PROSECUTOR**

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE E.V.VENUGOPAL

CRIMINAL REVISION CASE No.552 OF 2012

ORDER:

1 Heard Sri P.Venkat Reddy, learned counsel for the petitioner; Sri Venkateswar Rao Gudapati, learned counsel for the first respondent and Sri Vizarith Ali, the learned Assistant Public Prosecutor appearing for the State – 2nd respondent.

2 This criminal revision case, under Sections 397 and 401 Cr.P.C, is filed aggrieved by the judgment dated 31.01.2012 passed in CrI.A.No.23 of 2011 on the file of the Court of the learned II Additional District & Sessions Judge, (FTC) at Sangareddy, wherein and whereby the appeal preferred by the petitioner herein was dismissed confirming the judgment dated 03.02.2011 passed by the learned Judicial First Class Magistrate, Sangareddy in C.C.No.262 of 2009 was confirmed.

3 The petitioner herein filed a private complaint against the first respondent herein before the Court of the Additional Judicial First Class Magistrate, Sangareddy for the offence punishable under Sections 138 and 142 of N.I.Act. The sum and substance of the complaint was that the petitioner and the first respondent were in real estate business, as such both of them have acquaintance with each other. Due to the said acquaintance, the first respondent approached the petitioner for hand loan of Rs.5.00 lakhs for his urgent business necessary and on the petitioner

arranged the said amount on 24.12.2007. The first respondent executed a promissory note in favour of the petitioner herein on the even date by undertaking to repay the amount as and when demanded by the petitioner. Thereafter, on repeated demands made by the petitioner, the first respondent issued a cheque bearing No.456053 dated 20.4.2008 drawn on HSBC bank, Hyderabad, towards repayment of the hand loan amount of Rs.5.00 lakhs which he took from the petitioner. The petitioner presented the said cheque in ICICI bank, Kukatpalli branch for collection on 30.4.2008. But the said cheque was returned unpaid with an endorsement 'Exceeded arrangements' with the cheque return memo dated 30.4.2008. However, on the request made by the first respondent the petitioner again presented the cheque on 04.8.2008 into the bank, but the same was returned unpaid by the bankers due to insufficient funds with cheque return memo dated 04.8.2008. Thereafter, the petitioner got issued a registered legal notice to the first respondent demanding him to pay the amount covered by the cheque. Though the first respondent received the said notice, he did not choose either to pay the amount or to give reply. Hence the petitioner filed the complaint, which was taken on file as C.C.No.1001 of 2008 on the file of the Court of the Additional Judicial First Class Magistrate, Sangareddy for the offence punishable under Sections 138 and 142 of N.I.Act. Thereafter, the case was transferred to the Court of the Judicial First Class Magistrate, Special

Mobile Court, Sangareddy, (hereinafter referred to as 'the trial Court') and numbered as C.C.No.262 of 2009.

4 During the course of enquiry, the petitioner being the complainant got examined himself as P.W.1 and he also got examined two witnesses as P.Ws.2 and 3 and got marked Exs.P.1 to P.6. On behalf of the first respondent, D.Ws.1 to 3 were examined and Exs.D.1 to D.8 were marked.

5 The learned trial Court, after appreciating the material available before it, both oral and documentary, came to the conclusion that the petitioner failed to establish the guilt of the first respondent for the offence punishable under Sections 138 and 142 of N.I.Act and accordingly acquitted the first respondent of the said offence by judgment dated 03.02.2011.

6 Aggrieved by the judgment passed by the learned trial Court, the petitioner preferred Criminal Appeal No.23 of 2011 on the file of the Court of the learned II Additional District & Sessions Judge, (FTC) at Sangareddy. The learned Additional Sessions Judge, after re-appreciating the entire evidence, dismissed the appeal by judgment dated 31.01.2011. Hence the present criminal revision case.

7 The learned counsel for the petitioner submitted that the court below ought to have allowed the appeal as the first failed to rebut the presumption under N.I Act. He further submitted that since the petitioner

discharged his initial burden as signature of the drawer of the cheque is admitted by him and the cheque was received by holder for the discharge of debt. He further submitted that the Courts below failed to see that the first respondent failed to rebut the presumption under Section 118-A of the Negotiable Instruments Act, 1881. The learned counsel for the petitioner relied on the ratio laid down in ***K.Bhaskaran v. Sankaran Vaidhyan Balan***¹ in support of his contentions.

8 On the other hand, the learned counsel for the first respondent contended that both the courts below have concurrently held that the petitioner failed to establish the guilt of the first respondent beyond reasonable doubt and have rightly acquitted the first respondent of the alleged offence. Therefore, the judgments of both the courts below do not warrant any interference of this Court.

9 As seen from the record, both the courts below have held that the petitioner failed to produce the promissory note in order to establish the transaction. The petitioner also failed to produce the income tax returns to show that he has such capacity to lend money to the first respondent. Both the courts below have categorically held that the first respondent has succeeded in rebutting the presumption under Section 118-A of N.I. Act. The evidence of P.W.2 who was examined on behalf of the petitioner cannot be believed since P.W.2 was also complainant in another complaint

¹ (1999) 7 SCC 510

lodged against the first respondent. The first respondent has successfully rebutted the presumption under Section 139 of the N.I. Act that the cheque was issued not in connection with any legally enforceable debt. The first respondent has successfully established that there are several money transactions between him and the petitioner and that the subject cheque was issued in connection with some other transactions, which the petitioner failed to disprove. The facts of the case in ***K.Bhaskaran (1 supra)*** relied on by the learned counsel for the petitioner are not applicable to the case on hand.

10 For all the above reasons, I am of the considered view that the petitioner failed to prove the guilt of the first respondent beyond all reasonable doubt. Hence I do not incline to interfere with the well considered judgments of both the courts below.

11 Accordingly, this criminal revision case is liable to be and is dismissed as devoid of merit.

12 Miscellaneous petitions if any pending in this criminal revision case shall also stand dismissed.

//TRUE COPY//

SD/- K SHYLESHI
DEPUTY REGISTRAR



SECTION OFFICER

To

1. The Judicial First Class Magistrate, Special Mobile Court, Sangareddy.
2. The II Additional District & Sessions Judge (F.T.C) at Sangareddy.
3. Two CCs to the Public Prosecutor, High Court for the State of Telangana at Hyderabad (OUT)
4. One CC to SRI. P VENKAT REDDY, Advocate [OPUC]
5. One CC to SRI. VENKATESWARA RAO GUDAPATI, Advocate [OPUC]
6. Two CD Copies

HIGH COURT

EVV, J

DATED: 29/12/2023

ORDER
CRLRC.No.552 of 2012

DISMISSING THE CRL.RC
AS DEVOID OF MERIT

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