

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

**WEDNESDAY, THE ELEVENTH DAY OF OCTOBER
TWO THOUSAND AND TWENTY THREE**

**PRESENT
THE HONOURABLE SRI JUSTICE E.V. VENUGOPAL**

Criminal Revision Case No.281 of 2012

Criminal Revision filed under Section 397 & 401 Cr.P.C. to challenge the judgment dated 09.02.2012 in CrI.A.No.20 of 2009 on the file of the V Additional District & Sessions Judge (FTC), Khammam at Kothagudem, confirming the Judgment of conviction dated 09.01.2009 in C.C.No.63 of 2007 on the file of the Judicial Magistrate of First Class, Manuguru, Khammam District.

Between:

Sathu Satyanarayana, S/o. Yellaiah, aged about 64 years, Occ: Retd., S.C. Co., E.P.L., Ltd., R/o. H.No. 5-1-151, Shivalingapuram, Manuguru, Khammam District-507101.

...Petitioner/Accused.

AND

1. Mothoju Somaya Chary, S/o. Sudarshan Chary, aged about 64 years, Occ: Retired SC CO employee, R/o. Q.No.Spl. D-1241, Kunavaram Colony, Manuguru Town, Bhadradi Kothagudem District 507101.
2. The State of Andhra Pradesh, rep., by its Public Prosecutor, High Court Buildings, High Court of Andhra Pradesh, Hyderabad.

...Complainant/Respondent.

(CT is amended As per Court Order dated 06.09.2023 made in I.A.No.1/2023 in CrI.R.C.No.281 of 2012petitioner as respondent No.1 and respondent No.1 as petitioner.)

I.A. NO: 2 OF 2012(CRLRCMP. NO: 438 OF 2012)

Petition under Section 397 (1) Cr.P.C. praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to Suspend the Operation of the sentence passed in CrI.A.No.20 of 2009 on the file of V Additional District and Sessions Judge (FTC), Khammam at Kothagudem dt:09.02.2012 confirming the Judgment dt: 09.01.2009 in CC.No.63 of 2007, on the file of Judicial Magistrate of First Class, Manuguru, Khammam District and release the petitioner on bail, pending disposal of the above Criminal Revision Case.

Counsel for the Petitioner: SRI S. MADAN MOHAN RAO.

Counsel for the Respondent No.1: NONE APPEAR.

Counsel for the Respondent No.2: THE PUBLIC PROSECUTOR.

The Court made the following: ORDER

HON'BLE SRI JUSTICE E.V.VENUGOPAL

CRIMINAL REVISION CASE No. 281 OF 2012

ORDER:

This Criminal Revision Case has been filed challenging the judgment dated 09.02.2012 passed in Criminal Appeal No. 20 of 2009 by V Addl. District and Sessions Judge (FTC), Khammam at Kothagudem confirming the judgement of conviction dated 09.01.2009 in C.C. No. 63 of 2007 on the file of Judicial Magistrate of First Class, Manuguru, Khammam District wherein the accused was found guilty of the offence punishable under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as 'the 1881 Act'), convicted and sentenced to undergo simple imprisonment for a period of one year and also to pay a sum of Rs.1,60,000/- (Rupees One Lakh Sixty Thousand only) to the complainant towards compensation, in default of payment of compensation, he shall suffer simple imprisonment for six months.

2. The parties shall be hereinafter referred to as described in the Magistrate's Court.

3. Brief facts of the complainant's case are that the complainant and accused are acquainted with each other and out of such acquaintance, the accused had borrowed an amount of Rs.1,50,000/- from him on 31.01.2005 to meet his family

necessities and executed a promissory note in favour of complainant promising to pay the same with interest @24% p.a. on demand, and thereafter on demands, the accused had issued a cheque bearing No.301030, dated 21.01.2007 for Rs.1,60,000/- drawn on SBH, Manuguru Branch towards the said legally enforceable debt, thereafter the said cheque was presented and it was dishonoured due to insufficient funds in the account of accused. The complainant got issued a legal notice dated 23.02.2007 to the accused. The accused having received the said notice neither issued reply notice nor paid the amount. Hence, the complaint.

4. The Court below after considering the oral and documentary evidence found the accused guilty and sentenced him to undergo simple imprisonment for a period of one year and also to pay a sum of Rs.1,60,000/- (Rupees One Lakh Sixty Thousand only) to the complainant towards compensation, in default of payment of compensation, he shall suffer simple imprisonment for six months.

5. The accused preferred Criminal Appeal No. 20 of 2009 against the conviction and sentence in C.C. No.63 of 2007, dated 09.01.2009 on the file of Judicial Magistrate of First Class, Manuguru before the V Additional district and Sessions Judge (FTC), Khammam at Kothagudem, wherein and whereby the

learned District Judge, dismissed the appeal on 09.02.2012, confirming the finding of the Court below. Aggrieved by the said judgment, the accused preferred the present Criminal Revision Case contending that the judgment is illegal, improper and incorrect. Both the Courts below erred in convicting the accused without evaluating the oral and documentary evidence and prayed to set aside the judgments.

6. Mr. S. Madan Mohan Rao, learned counsel for the revision petitioner/accused contended that there is material alternation in Ex.P.1 cheque but the appellate Court erred in holding that the accused has not taken the plea that Ex.P.1 is not a blank cheque and that the appellate Court ought to have seen that the accused has taken a specific plea that except the amount of Rs.60,000/- the remaining part in the cheque was blank and admittedly the remaining part was filled by P.W.2 and that Ex.P.2/pronote was also materially altered which was filled by P.W.2 in collusion with P.W.1. Hence, prayed to set aside the judgment.

7. *Per contra*, Mr. Vizarith Ali, learned Asst. Govt. Pleader submitted that the finding recorded by the appellate Court is based on material much less legally admissible material and that the appellate Court, after re-appreciating the entire material available on record, rightly passed the judgment, therefore, it is

not a fit case to interfere with the finding recorded by the appellate Court.

8. During the course of arguments, the learned counsel for the revision petitioner would submit that the revision petitioner is suffering from physical illness and not in a position to move from the bed and the revision petitioner has suffered in judicial custody for some time and prayed to take a lenient view. There was no representation on behalf of unofficial respondent No.1 and notice sent to the unofficial respondent was returned with an endorsement 'Addressee left without instructions'.

9. This Court considered the submissions of learned counsel for the revision petitioner/accused and the learned Asst. Public Prosecutor and perused the record.

10. Both the Courts below have appreciated the evidence available on record in right perspective and have come to just conclusion that the accused has committed the offence punishable under Section 138 of the 1881 Act.

11. However, since the offence is of the year 2005 and the revision petitioner/accused has been roaming around the Courts for all these years. Moreover, the revision petitioner/accused was in judicial custody for some days and that the accused is a senior citizen and

taking into consideration of the health condition of the accused and the submissions made by the learned counsel for the revision petitioner/accused as well as the learned Assistant Public Prosecutor representing on behalf of the respondent-State, to meet the ends of justice, this Court is of the view that a lenient view can be taken by reducing the sentence of imprisonment to the period already undergone by the accused.

11 (1). The revision petitioner/accused is directed to pay the compensation amount of Rs.1,60,000/- (Rupees One Lakh Sixty Thousand only) to the complainant, as awarded by the lower Court, which has been confirmed by the appellate Court, in default of payment of compensation to the complainant, the revision petitioner/accused shall undergo simple imprisonment for six (6) months. The said compensation amount shall be paid to the complainant within one month from the date of receipt of a copy of this order. The learned Magistrate is directed to take necessary steps in accordance with law.

12. Accordingly, the Criminal Revision Case is dismissed, by modifying the sentence with the above terms.

Miscellaneous petitions if any pending in this Criminal
Revision Case shall also stand dismissed.

SD/- M. RAMANA KRISHNA
DEPUTY REGISTRAR
SECTION OFFICER

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To,

1. The V Additional District & Sessions Judge (FTC), Khammam at Kothagudem.
2. The Judicial Magistrate of First Class, Manuguru, Khammam District.
3. Sri Sathu Satyanarayana, S/o. Yellaiah, aged about 64 years, Occ: Retd., S.C. Co., E.P.L., Ltd., R/o. H.No. 5-1-151, Shivalingapuram, Manuguru, Khammam District- 507101.
4. One CC to Sri S.Madan Mohan Rao, Advocate [OPUC]
5. One CC to the Public Prosecutor, High Court Buildings, Hyderabad. [OPUC]
6. Two CD Copies

JCK

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HIGH COURT

EVV, J

DATED: 11/10/2023



ORDER

CRLRC.No.281 of 2012

**MODIFYING THE SENTENCE AND DISMISSING THE
CRIMINAL REVISION CASE.**

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23/12/23