

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: 554 OF 2012

Revision filed under Section 397/401 of CrPC against/aggrieved by the Judgment dt. 31-01-2012 on the file of the II Additional District and Sessions Judge (FTC) at Sangareddy, made in CrI A.No.24/2011 as well as the Judgment in CC.NO.263/2009 on the file of Judicial First Class Magistrate cum Special Mobile Court, Sangareddy

Between:

1. Kulkuri Ramchandra Reddy, S/o Sadasiva Reddy Business
H.No.1-90, Near GHMC office Patancheru Town and Mandal
Medak District

**...PETITIONER/APPELLANT/COMPLAINANT
AND**

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

...RESPONDENT/RESPONDENTS/ACCUSED

State of AP., Rep.by its, Public Prosecutor, High Court of AP Hyderabad.

...RESPONDENTS

Counsel for the Petitioner : Sri. P Venkat Reddy

**Counsel for the Respondent No.1: Sri Venkateswara Rao
Gudapati**

Counsel for the Respondent No.2: Public Prosecutor (TG)

The Court made the following : Judgement

THE HON'BLE SRI JUSTICE E.V.VENUGOPAL

CRIMINAL REVISION CASE No.554 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.24 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.263 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.10.00 lakhs for his urgent business necessary and on the petitioner

arranged the said amount in the month of December, 2007. The first respondent executed a promissory note in favour of the petitioner herein 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.242435 dated 02.4.2008 drawn on HSBC bank, Hyderabad, towards repayment of the hand loan amount of Rs.10.00 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 'payment stopped by the drawer' 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 same reason 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 to pay the amount but he gave an evasive reply. Hence the petitioner filed the complaint, which was taken on file C.C.No.263 of 2009 for the offence punishable under Sections 138 and 142 of N.I.Act.

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.8. 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.24 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 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

¹ (1999) 7 SCC 510

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.

**SD/- SRI T. SRINIVAS
DEPUTY REGISTRAR**

//TRUE COPY//

SECTION OFFICER

To,

1. The II Additional District and Sessions Judge (FTC) At Sangareddy. (with Record if any)
2. One CC to Sri P Venkat Reddy, Advocate [OPUC]
3. One CC to Sri Venkateswara Rao Gudapati Advocate [OPUC]
4. Two CC to the Public Prosecutor, High Court For The State of Telangana at Hyderabad. [OUT]
5. Two CD Copies

CHR

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HIGH COURT

DATED: 29/12/2023

ORDER

CRLRC.No.554 of 2012



**THE CRIMINAL REVISION CASE
IS DISMISSED AS DEVOID OF MERIT.**

(8) *CHP*
6/3/24