Date of reserved for orders : 05-11-2026
Date of pronouncement : 10-11-2026
Date of uploading : 10-11-2026

APHC010161672023

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI [3604]
(Special Original Jurisdiction)

TUESDAY, THE 10th DAY OF NOVEMBER 2026

PRESENT

THE HONOURABLE SMT JUSTICE SUNITHA GANDHAM

CRIMINAL PETITION NO: 2461/2023

Between:

1. PITANIKANAKAM, , W/O. APPARAO, AGED 42 YEARS, R/O. D.NO.2-17, PEDAGADI VILLAGE, PENDURTYMANDALAM,VISAKHAPATNAM DISTRICT.

...PETITIONER/ACCUSED

AND

1. VANAM SANKARARAO, S/O. SANKARARAO, AGED 36YEARS, R/O. D.NO.2-1, PEDAGADI VILLAGE, PENDURTYMANDALAM, VISAKHAPATNAM DISTRICT.
2. THE STATE OF AP, REP. BY ITS PUBLIC PROSECUTOR, HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

...RESPONDENT/COMPLAINANT(S):

Petition under Section 437/438/439/482 of Cr.P.C and 528 of BNSS praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court pleased to quash the proceeding against the petitioner/accused 2 in CC.No.599/2020 on the file of Hon'ble VII Addl. Metropolitan Magistrate court of Visakhapatnam, and pass

IA NO: 1 OF 2023

Petition under Section 482 of Cr.P.C and 528 of BNSS praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to dispense with the filing the certified copy of the

Charge Sheet in CC.No.599/2020 on the file of Hon'ble VII Addl. Metropolitan Magistrate court of Visakhapatnam and pass

IA NO: 2 OF 2023

Petition under Section 482 of Cr.P.C and 528 of BNSS praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to stay all further proceedings including the appearance of the petitioner/accused 2 in CC.No.599/2020 on the file of Hon'ble. VII Addl. Metropolitan Magistrate court of Visakhapatnam and pass

Counsel for the Petitioner/accused:

1. K S NAGENDRA VARA PRASAD

Counsel for the Respondent/complainant(S):

1. PUBLIC PROSECUTOR (AP)
2. V N CHAKRAPANI

The Court made the following:

THE HON'BLE SMT. JUSTICE SUNITHA GANDHAM

CRIMINAL PETITION No.2461 OF 2023

ORDER:

This Criminal Petition is filed by the petitioner/ accused No.2 to quash the proceedings in C.C. No.599 of 2020 on the file of learned VII Additional Metropolitan Magistrate, Visakhapatnam, for the offence under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. The case of the petitioner is that, petitioner/ accused No.2 had never borrowed any amount from the respondent No.1 along with her husband, who is accused No.1 and not issued any cheque to the respondent No.1, she is falsely implicated in this case though she has not issued any cheque, previously one Pentakota Dass filed CC. No.98 of 2017 on the file of V Special Magistrate, Visakhpatnam against her husband on the foot of the alleged pronote dated 08.08.2015 said to have been witnessed by respondent No.1 and PSR Naidu and on 09.09.2017, the same was compromised before the Lok-Adalat and subsequently, the documents were not returned by the said Pentakota Dass and he got filed CC.No.599 of 2020 against her and her husband through respondent No.1, to get wrongful gain.

3. Heard learned counsel for the petitioner and respondent No.1.

4. On hearing both sides and upon perusing the material placed on record, the point that would arises for consideration is:

Whether the petitioner had established her case to quash the proceedings in C.C. No.599 of 2020 of the offence under Section 138 of the Act?

5. As seen from the record, respondent No.1 has filed a complaint in C.C. No.599 of 2020 alleging that on 04.04.2015, the accused Nos.1 and 2 jointly borrowed an amount of Rs.3,00,000/- from the respondent No.1, executed promissory note on even date agreeing to repay the same with interest at 24%

per annum and upon repeated demands, accused No.1 had issued a cheque bearing No.859966, dated 02.08.2018 towards payment of the said debt and when the cheque is presented, the same is returned with an endorsement 'insufficient funds' vide memo dated 30.08.2018, and thereafter, after duly complying with the mandatory requirements under Section 138 of the Act, respondent No.1 filed the instant complaint against the petitioner and her husband.

6. In this regard, it is opposite to mention Section 138 of the Act which reads thus:

> **"138.Dishonour of cheque for insufficiency, etc., of funds in the account:** *Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:*

So, the very starting words of this Section says that the cheque must be drawn by a person on account maintained by him or her.

7. The main ingredient to attract the offence under Section 138 of the Act is that the account must be maintained by a person who had issued cheque towards the discharge of a debt covered under any instrument. The petitioner had not issued any cheque in favour of respondent No.1 and the cheque bearing No.859966 clearly reveals that it was issued from the account bearing No.30450755818 maintained by the accused No.1 and as per the admitted version of the respondent No.1 also, the cheque was not issued by the petitioner/ accused No.2 but was issued by her husband/ accused No.1. Execution of promissory note by the petitioner along with her husband is not

suffice to attract the ingredients against the petitioner. Since the cheque was not issued from the account maintained by the petitioner/ accused No.2, the complaint under Section 138 of N.I Act is not maintainable.

8. **In the result**, and for the foregoing reasons, this Criminal Petition is allowed, quashing the proceedings against the petitioner/ accused No.2 alone in C.C. No.599 of 2020 on the file of learned VII Additional Metropolitan Magistrate, Visakhapatnam, for the offence under Section 138 of Negotiable Instruments Act, 1881.

As a sequel thereto, pending miscellaneous petitions, if any, shall stand closed.

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SUNITHA GANDHAM, J

10.11.2026
Knl