APHC010234062009

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

TUESDAY, THE 6th DAY OF OCTOBER 2026

PRESENT

THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA

CRIMINAL REVISION CASE NO: 1018 OF 2009

Between:

1. K. BALA VENAKATA REDDY, S/O. VENKATA REDDY RETD. EMPLOYEE R/O. RAM RAHIM NAGAR, KURNOOL, KURNOOL DISTRICT.

...PETITIONER

AND

1. M MADAN MOHAN ANOTHER, S/O. M.V. SATYANARAYANA R/O. 11-117-9A2, ABBAS NAGAR, KURNOOL, KURNOOL DISTRICT.
2. STATE OF A P THROUGH PUBLIC PROSECUTOR, HIGH COURT OF A.P., HYDERABAD.

...RESPONDENT(S):

Counsel for the Petitioner:

1. P SRILATHA REDDY

Counsel for the Respondent(S):

1. PUBLIC PROSECUTOR

The Court made the following:

THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA

CRIMINAL REVISION CASE NO: 1018 OF 2009

ORDER:

1. Present Criminal Revision Case (for short Crl.R.C) has been preferred against the Order of conviction passed by the Principal District and Sessions Judge, Kurnool (hereinafter referred to as "Appellate Court"), dated 23.06.2009 in Criminal Appeal No.84 of 2008 wherein he confirmed the Judgment of conviction dated 30.06.2008 in C.C.No.72 of 2007 passed by the Judicial First Class Magistrate for Prohibition and Excise, Kurnool.

2. The present petitioner was arrayed as an accused in a private complaint made by 1st respondent under section 138 of the Negotiable Instruments Act (for short hereinafter referred to as "the N.I Act"). 1st Respondent being Complainant, filed a complaint before the learned Special Judicial magistrate of First Class (for Prohibition & Excise), Kurnoor (hereinafter referred to as "Trial Court") against the accused.

3. Brief facts of the case are that: Accused issued a cheque bearing No.000327, dated 15.03.2005 for a sum of Rs.50,000/- (Rupees fifty thousand only), drawn on District Cooperative Central Bank Ltd., Krishna Nagar Branch, Kurnool (for short "DCC bank") in favour of defacto complainant, for discharge of a hand loan availed by the accused for his necessities. The complainant

presented the said cheque on 27.07.2005 to his Banker i.e., Rayalaseema Grameena Bank, Krishna Nagar Branch, Kurnool, for collection, but, said cheque was dishonoured for reason “insufficient funds”. Hence, the complainant issued a legal notice to the accused on 29.07.2005 demanding the accused to pay the dishonoured cheque amount, but, the accused failed to comply with the demand of the notice. Hence, the complainant lodged a private complaint before the learned Magistrate for the offence punishable under section 138 of the N.I Act.

4. During trial before the learned Magistrate, the Complainant was examined as P.W.1, some of the documents were marked as Ex.P.1 to Ex.P.6. Petitioner/ accused also got examined as D.W.1, and one certified copy of Judgment in I.P.No.32 of 2005 was marked as Ex.D.1 on behalf of defence.

5. After hearing both parties, upon perusing the oral and documentary evidence placed on record, learned trial judge found the petitioner/accused to be guilty for the offence punishable under section 138 of the N.I Act and petitioner/accused was sentenced to undergo simple imprisonment for a period of two (02) months and to pay a fine of Rs.2,000/- (Rupees two thousand only), in default of payment of fine, shall undergo simple imprisonment for a period of one (01) month.

6. Said order of conviction was challenged by the petitioner/accused through an appeal before the learned Principal District and Sessions Judge, Kurnool. Learned Appellate Court has heard the appeal and dismissed the appeal by confirming the judgment of conviction passed by the learned Trial Judge. Hence, the instant Criminal Revision Case has been preferred by the petitioner/accused.

7. Heard Sri A.V.Pardhasaradhi, learned Legal-aid Counsel for petitioner/ accused, and Kum Akhila Naidu, learned Additional Public Prosecutor for Respondent No.2.

8. The points as raised for determination before this court challenging the concurrent findings of the learned Courts below are:

1) The registered demand notice as contemplated under section 138 of the N.I Act was not at all served upon the petitioner, thus, the criteria to lodge a complaint under section 138 of the N.I Act was not fulfilled, thereby, the complaint itself vitiates.

2) The complainant has failed to demonstrate any legally enforceable debt existed or any transaction existed between complainant and petitioner/ accused. He submits that only it was stated in the complaint that to discharge a hand loan, the cheque was issued by accused, whereas, there

is no transaction between petitioner/accused and complainant. Rather, admitted there existed business relationship between father of complainant and petitioner/accused. Petitioner could not remit business credits for which father of the complainant has filed a case vide Insolvency Proceedings No.32 of 2005 before the competent Court against the petitioner/ accused. Some blank cheques were issued by the petitioner/accused during existing business relationship between father of complainant and petitioner/accused, those blank cheques were given to the father of complainant as collateral security for some other transactions, but, the petitioner has used those two blank cheques to file two complaints.

9. Heard learned Counsel for Petitioner and perused the impugned Judgments passed by the learned Trial Court as well as the learned Appellate Court.

Observation of the court:

10. POINT NO.1: To decide point No.1, it appears that the learned Trial Judge has noted his finding in paragraph No.13 that though the registered notice was returned with an endorsement “Addressee left”, but, it was addressed to the same address over which the summons in I.P.No.32 of 2005 were served. The learned Trial Court was of the view that according to the provisions of section 27

of the General Clauses Act – "*if any registered consignment was sent to a correct address, it has to be said that addressee received the same, though he actually not received*".

11. In this case, admittedly, both the Courts below gave concurrent finding against the petitioner to be guilty for an offence punishable under section 138 of the N.I Act. It has to be considered whether the evidence of D.W.1 and document marked as Ex.D.1 are sufficient to rebut the statutory presumption under section 139 read with section 118 of the N.I Act.

12. Law regarding rebuttal of statutory presumption by an accused in a case under section 138 of the N.I Act was laid down by the Hon'ble Supreme Court in several cases.

13. In **Rangappa v. Sri Mohan** reported in **(2010) 11 SCC 441**, the Hon'ble Apex Court has held in paragraphs 27, 28, 30, which reads as follows:

> *"27. Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section -7- CRL.R.C. No.1423 OF 2009 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of*

reverse onus clauses and the defendant-accused cannot be expected to discharge an unduly high standard or proof.

28. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of "preponderance of probabilities". Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own.

30. The fact that the accused had made regular payments to the complainant in relation to the construction of his house does not preclude the possibility of the complainant having spent his own money for the same purpose. As per the record of the case, there was a slight discrepancy in the complainant's version, insofar as it was not clear whether the accused had asked for a hand loan to meet the construction-related expenses or whether the complainant had incurred the said expenditure over a period of time. Either way, the complaint discloses the prima facie existence of a legally enforceable debt or liability since the complainant has maintained that his money was used for the construction expenses. Since the -8- CRL.R.C. No.1423 OF 2009 accused did admit that the signature on the cheque was his, the statutory presumption comes into play and the same has not been rebutted even with regard to the materials submitted by the complainant."

14. In **Basalingappa v. Mudibasappa** reported in **(2019) 5 SCC 418**, the Hon'ble Apex Court in paragraphs 25, 25.1 to 25.5 held as follows:

"25. We having noticed the ratio laid down by this Court in the above cases on Sections 118(a) and 139, we now summarise the principles enumerated by this Court in following manner:

25.1. Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

25.2. The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

25.3. To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

25.4. That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden.

25.5. It is not necessary for the accused to come in the witness box to support his defence".

15. In **Rajaram v. Maruthachalam** reported in **(2023) 16 SCCC 125**, the Hon'ble Supreme Court in paragraphs 25 and 33 observed as follows:

"25. It can thus be seen that this Court has held that once the execution of cheque is admitted, Section 139 of the NI Act mandates a presumption that the cheque was for the discharge of any debt or other liability. It has, however, been held that the presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities. It has further been held that to rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. It has been held that inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

33. After taking into consideration the defence witnesses and the attending circumstances, the learned trial court found that the defence was a possible defence and as such, the accused was entitled to benefit of doubt. The standard of proof for rebutting the presumption is that of preponderance of probabilities. Applying this principle, the learned trial court had found that the accused had rebutted the presumption on the basis of the evidence of the defence witnesses and attending circumstances".

16. This Court is holding revisional jurisdiction in dealing with concurrent findings of Courts below who recorded conviction of petitioner/accused under Section 139 of the N.I Act. The power of High Court in revision against order of conviction is very limited. The Hon'ble Supreme Court in **Kuntegowda v. Thurubaiah** reported in **(2026) SCC Online SC 1485** has held in paragraphs 7.1, 7.3 and 7.5 as follows:

*"7.1. This Court, in the **State of Maharashtra v. Jagmohan Singh Kuldip Singh Anand, (2004) 7 SCC 659 : 2004 SCC (Cri) 2003** observed that the High Court, in exercise of its revisional jurisdiction, cannot embark upon an in-depth roving re-examination of the oral evidence and medical evidence and come to a conclusion contrary to the consistent one reached by two courts below. In the facts of the present case, in the impugned judgment, the High Court gravely erred in upsetting the concurrent findings of conviction of the trial court and the Appellate Court by substituting its own conclusions and reasoning on the merits of the case and thereby erred in setting aside the well-reasoned and correct judgment and orders of the trial and appellate courts.*

7.3. The contours for exercise of revisional jurisdiction has been well settled by the judicial dicta of this Court wherein time and again it has been observed that the High Court shall not interfere with the orders of the lower court unless:

i. The order or finding of the lower court is perverse, grossly erroneous, glaringly unreasonable or wholly unreliable or untenable in law.

ii. The lower court has passed the impugned order after considering an immaterial or irrelevant material or no material at all. -11- CRL.R.C. No.1423 OF 2009.

iii. There is a non-consideration of any relevant material or the judicial discretion has been exercised arbitrarily or capriciously.

7.5. In the facts of the present case, we find that the High Court has failed to highlight any reason or material satisfaction to the effect that there was any such glaring contradiction or perversity apparent on the face of the record so as to justify the exercise of the powers under revisional jurisdiction and thereby erred in interfering with the judgment and orders of the courts below. Therefore, the present appeal has to be allowed by setting aside the impugned order of the High Court. In view of the aforesaid discussion, we are of the view that the High Court committed an error in setting aside the order of conviction in exercise of revisional jurisdiction. No sufficient ground has been mentioned by the High Court in its judgment to enable it to exercise its revisional jurisdiction for setting aside the conviction".

17. In view of the ratio of **Kuntegowda**, this Revisional Court has to determine whether the findings of the Courts below are perverse or unreasonable in the attending facts and circumstances of this case, or, wholly unreliable regarding the conviction against the petitioner. The narration of the present defence case gathered through cross examination of P.W.1, evidence of D.W.1 as well as Ex.D.1. It demonstrates accused gave two blank cheques with signatures to the father of the complainant as collateral security for some other transactions. It has been further pleaded that the father of complainant has filed Insolvency Petition vide I.P.No.32 of 2005 before the competent Court against

the creditors and in such Insolvency Proceedings, the petitioner/accused was a party. It is further case of the petitioner/accused that complainant had no scope or capacity to lend any money or loan to the accused, but, complainant used two blank cheques to foist false case against petitioner.

18. Now, at this juncture, it has to be verified whether the defence placed by the accused before the learned Trial Court is sufficient to rebut the presumption under section 139 read with section 118 of the N.I Act. In a proceeding under section 138 of the N.I Act, the Holder of a Cheque has a statutory presumption under section 139 read with section 118 of the N.I Act, that the cheque was issued to discharge a legally enforceable debt. Such presumption is rebuttable in nature and the degree of proof of such rebuttal is "preponderance of probabilities".

19. To understand the principles of preponderance of the probabilities, it is necessary to follow **Wright v. Wright (1948) 77 CLR 191:**

> *"The belief regarding the existence of a fact may be founded on a preponderance of probabilities. A prudent man faced with conflicting probabilities concerning a fact will act on the supposition that the fact exists, if on weighing the various probabilities he finds that the preponderance is in favour of the existence of the particular fact as a prudent man. The court invariably applies this test for finding whether a fact in issue is said to be proved. The first step in this process is to fix the probabilities. The second is to weight them, though the two often intermingle. The impossible is weeded out at the first stage; the improbable at the second stage. Within the wide range of probabilities*

the Court often has a difficult choice to make, but it is this choice which ultimately determines where the preponderance of probabilities lies. The nature and gravity of an issue necessarily determines the manner of attaining satisfaction of the truth of the issue."

20. In **Rishi Kesh Singh v. The State reported in AIR 1970 Allahabad 51**, it is held that preponderance of probability means *"an outweighing in process of balancing however slight may be the tilt of the balance or the preponderance"*.

21. In analyzing the entire case in hand, let me consider whether the evidences are sufficiently prove defence case in terms of preponderance of probabilities to rebut the presumption under section 139 read with section 118 of the N.I Act. Learned Trial Court in determining the fact that the legal notice was served, observed that it was addressed properly to the petitioner's address, which was mentioned in the summons in I.P.No.32 of 2005. The Xerox copy of Judgment in I.P.No.32 of 2005 was filed and marked as Ex.D.1 and Xerox copy of Decree in I.P.No.32 of 2005 was marked as Ex.P.6. It appears from the exhibited documents that no summons in I.P.No.32 of 2005 was filed or exhibited before the learned Trial Court. So, it is quite astonishing how the learned trial court came to the conclusion that summons in I.P.No.32 of2005 was served upon petitioner/ accused. Furthermore, the learned Trial Court has not taken note of the summons issued by the learned Trial Court in the said proceedings under section 138 of the N.I Act. Furthermore, in deeply analyzing the facts in hand, it appears that the case of the complainant is that the petitioner/accused has

issued a cheque for a sum of Rs.50,000/- (Rupees fifty thousand only) to discharge hand loan, which was availed by the accused for his necessities. It is quite dark what was the actual debt, when the hand loan was given, is there any witness at the time of giving such hand loan, whether entire Rs.50,000/- was given as hand loan or was given in part, if so, what is the circumstances of the hand loan given and what is the source of money or capacity of the petitioner to forward such hand loan to the petitioner/accused. Those questions are unanswered either in complaint or in examination-in-chief of P.W.1. Through cross examination of P.W.1, defence case was narrated to the facts that there were business transactions in between the accused and father of the complainant, which was sufficiently proved by filing Judgment in I.P.No.32 of 2005 that there are no transactions between the complainant and accused person. Rather, when there existed transactions in between father of complainant and accused, there is no possibility to get loan from the complainant by the accused. If defence demonstrate each fact and evidence which said to a man of ordinary prudence to believe probabilities of existence of fact of such a nature which may destroy prosecution case, then, it can be said to be proved by the principle of “preponderance of probabilities”.

22. Considering the entire aspect, it appears that the petitioner has successfully rebutted the statutory presumption by placing sufficient defence

before the learned Trial Court. Though the onus was shifted thereafter to the petitioner, such onus was never discharged by the complainant. Learned Trial Court as well as learned Appellate Court lost site to analyze the value of defence witness, which has actually rebutted the statutory presumption in this case.

23. In my view, the defence has successfully rebutted the presumption in this case, thereby, existence of legally enforceable debt as claimed by the complainant has not sufficiently proved. Thus, the conviction and sentence recorded by the learned trial court, affirmed by the learned Appellate Court against the petitioner/accused for the offence punishable under section 138 of the N.I Act appears to be illegal and improper. Thus, the same is hereby set aside.

24. In view of the above, the instant Criminal Revision case is allowed. There shall be no order as to costs.

25. The petitioner/accused is hereby acquitted from this case.

26. The sureties standing in favour of the petitioner are also released.

Miscellaneous petitions, if any, pending in this Criminal Revision Case shall stand closed.

SRI JUSTICE SUBHENDU SAMANTA

Dated 06.10.2026
KS

144

THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA

CRIMINAL REVISION CASE NO: 1018 OF 2009

Dated:06.10.2026.

KS