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APHC010508182023

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

FRIDAY, THE 6th DAY OF NOVEMBER 2026

PRESENT

THE HONOURABLE SMT JUSTICE SUNITHA GANDHAM

CRIMINAL PETITION NO: 7724/2023

Between:

1. BELLAPUKONDA VENKATA BHIMESWARA SUBBA RAJU @ SUBBA RAJU, S/O RAMACHANDRA RAJU, AGED ABOUT 48 YEARS, OCC-BUSINESS, C/O GUTTULA NAGESWARA RAO BUILDING, 3RD FLOOR, SAI BRUNDHAVANAM MEGA TOWN SHIP, LEFT SIDE 3RD STREET, LAST BUILDING, R/O NADAKUDURU, KAKINADA RURAL MANDAL, KAKINADA DISTRICT.

...PETITIONER/ACCUSED

AND

1. THE STATE OF ANDHRA PRADESH, REP. BY ITS PUBLIC PROSECUTOR, HIGH COURT OF A.P., AMARAVATHI, THROUGH STATION HOUSE OFFICER, KARAOA POLICE STATION, EAST GODAVARI (DR.B.R.AMBEDKAR KONA SEEMA)DISTRICT.
2. SMT INAKOTI SUNDARI, W/O LATE SRINIVAS, AGED ABOUT 42 YEARS, OCC- HOUSE MAKER, R/O D.NO. 26-1-129/1, RAJUBABU NAGAR, RAMACHANDRAPURAM VILLAGE AND MANDAL, EAST GODAVARI (DR.B.R.AMBEDKAR KONA SEEMA)DISTRICT.

...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 of all further proceedings in CC.No 366 of 2023 on the file of, The Court of the Additional Judicial First

Class Magistrate, Ramachandrapuram, for alleged offences under Sections 138 and 142 of the Negotiable Instruments Act

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 filing of the original certified copy of CC.No 366 of 2023 on the file of The Court of the Additional Judicial First Class Magistrate, Ramachandrapuram

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 of all further proceedings including appearance of the Accused /petitioner in CC.No 366 of 2023 on the file of The Court of the Additional Judicial First Class Magistrate, Ramachandrapuram, pending disposal of the quash petition

Counsel for the Petitioner/accused:

1. CHALLA AJAY KUMAR

Counsel for the Respondent/complainant(S):

1. PUBLIC PROSECUTOR (AP)
2. KOCHIRI RAJA SHEKAR

The Court made the following:

THE HON'BLE SMT. JUSTICE SUNITHA GANDHAM

CRIMINAL PETITION NO:7724 OF 2023

ORDER:

This Criminal Petition is filed by the petitioner/accused to quash the proceedings in C.C.No.366 of 2023, dated 09.02.2023, on the file of the Court of the learned Judicial First Class Magistrate, Ramachandrapuram, for the offences punishable under Sections 138 and 142 of the Negotiable Instruments Act, 1881 (for short, "the Act").

2. The case of the petitioner is that the cheque in question is a non-Cheque Truncation System (non-CTS) cheque, the Reserve Bank of India (RBI) directed the complete withdrawal of non-CTS cheques from clearing by June 2017 and that, therefore, such a cheque could not be presented for collection, a complaint under Section 138 of the Act cannot be maintained on the basis of a non-CTS cheque, as it is not a negotiable instrument, and the cheque, which was in the custody of the complainant, was presented deliberately with an ulterior motive.

3. While placing reliance upon the judgment of the Telangana High Court in ***Syed Asim Fardeen v. State of Telangana***[1], learned counsel for the petitioner submitted that in this case also non-CTS cheque is involved and it ceases to be a Negotiable Instrument and as such, the proceedings are liable to be quashed. Learned counsel for the respondent No.2 would argue that despite being aware of the RBI instructions, petitioner retained the old cheque leaves and issued the cheque to respondent No.2 and relied upon the judgment of coordinate bench this Court in ***Jayakalyana Rama v. State of Andhra Pradesh***[2].

4. The point that arises for consideration is whether the proceedings are liable to be quashed solely on the ground that the cheque was returned with the endorsement "Non CTS Cheque".

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[1] Criminal Petition No.896 of 2022, dated 29.11.2022
[2] Criminal Petition Nos.1908 and 1909 of 2019 dated 08.11.2023

5. Case of the respondent No.2 is that, on 22.02.2021, having borrowed an amount of Rs.10,00,000/-, petitioner executed a promissory note on even date, agreeing to repay the said amount with interest at 24% per annum and despite several demands for repayment, the petitioner had issued cheque bearing No.427219, dated 14.09.2022, for Rs.7,50,000/-, drawn on Oriental Bank of Commerce, Kakinada Branch, towards part payment of the amount due, and when the cheque was presented for collection, it was returned with the endorsement “Non CTS Cheque”. After complying with the conditions under Section 138 of the Act, respondent No.2 filed the complaint.

6. There is no dispute that the RBI advised banks to issue only CTS-2010 standard-compliant cheques and that the separate clearing arrangements for non-CTS cheques were discontinued with effect from 31.12.2018. Consequently, a non-CTS cheque cannot be presented through the CTS clearing system. However, the discontinuance of a clearing facility and the legal character of the instrument are two different matters. In this regard, the published clarification of RBI specifically states that, though non-CTS cheques cannot be presented in CTS and banks have been advised to withdraw them from customers, such cheques continue to be valid as negotiable instruments. Therefore, the petitioner’s contention that a non-CTS cheque ceases to be a negotiable instrument cannot be accepted.

7. The RBI instructions are intended to regulate the manner in which cheques are processed and cleared by banks. They do not, by themselves, declare that every non-CTS cheque already issued or remaining in the hands of a payee is void or that the underlying liability, if any, stands extinguished. The direction to customers to surrender old cheque leaves and obtain new cheque books is a banking measure. It does not amount to a statutory prohibition against the existence or transfer of the instrument under the Negotiable Instruments Act. The fact that a bank may decline to process a

non-CTS cheque through the CTS mechanism does not make the instrument non-negotiable.

8. At the same time, it must be made clear that the mere fact that a cheque is a valid negotiable instrument does not automatically establish an offence under Section 138 of the Act. The statutory ingredients of that provision must independently be satisfied. Section 138 applies where a cheque issued towards discharge, in whole or in part, of a legally enforceable debt or other liability is returned unpaid for the reasons contemplated by that provision. It is not every return of a cheque unpaid, irrespective of the reason, that attracts penal liability. The nature and effect of the bank's endorsement, the circumstances in which the cheque was issued and presented, and the conduct of the drawer are therefore relevant matters.

9. In the present case, on 14.09.2022, the cheque was issued, whereas, the alleged loan transaction took place on 22.02.2021. Thus, the cheque is not alleged to have been issued in the distant past, before the loan transaction. The specific case of respondent No.2 is that the petitioner issued the cheque towards part payment of the debt due to him. Whether the cheque was voluntarily issued by the petitioner, whether it represented a legally enforceable liability, and whether the petitioner knowingly issued a non-CTS cheque despite the RBI instructions and the said reasons of return does not come under the purview of the Act, are matters which require consideration on the basis of evidence.

10. The return endorsement in the present case is stated to be "Non CTS Cheque". The material presently referred to in the petition does not include any undisputed clarification from the drawee bank establishing that the cheque was returned solely for a technical reason wholly unconnected with the petitioner, or that the bank examined the account and that the account position was irrelevant to the return. The effect of the endorsement and the circumstances in which the cheque was returned must be examined with the

assistance of the relevant bank records and evidence. It would not be proper for this Court, in proceedings seeking quashing, to record a final finding on those disputed matters.

11. The petitioner placed reliance on ***Syed Asim Fardeen*** (supra) and in which, having considered the facts and circumstances of the case, an undisputed receipt-cum-undertaking relating to cheques issued in 2012, the long interval between the alleged transaction and the complaint, and a specific letter from the bank clarifying that the cheque had been returned for the reason "Non-CTS Cheque" and not for insufficiency of funds, complainant's assertion regarding the return memo was contradicted by the bank's clarification, the Telangana High Court held that the prosecution is not sustainable. The present case stands on a different factual footing. The alleged loan is of 22.02.2021 and the cheque is dated 14.09.2022. On the material placed before this Court, there is no comparable undisputed bank clarification or admitted material establishing fabrication of the return memo and therefore, the said decision does not warrant quashing of the present proceedings at this stage.

12. In this regard, it is to be noted that in ***Hansil Bharatkumar Saparia v.Falguni Vipul Viradia***[3], the Bombay High Court noticed the RBI clarification that non-CTS cheques continue to be valid negotiable instruments, notwithstanding the discontinuance of their presentation through CTS. In that case, the Court declined to interfere with the proceedings under Section 138, observing that the defences relating to the nature of the cheque and the liability were matters to be considered at trial. The factual feature that some cheques in that case had earlier been returned for insufficiency of funds was also noticed. Therefore, the said judgment supports the limited proposition that a non-CTS cheque does not become a non-negotiable instrument merely

[3] Criminal Writ Petition No.2451 of 2022, dated 23.01.2024

because the CTS clearing facility has been discontinued; it does not dispense with proof of the statutory ingredients of Section 138.

13. Further, in ***Sri Rohith Vs. Sri Anil Kumar J[4],*** the High Court of Karnataka observed that, the cheque truncated scheme was introduced by the Reserve Bank of India in the year 2011 and the scheme was still in operation upto 31.12.2018 and therefore, on and from 01.01.2019, the non CTS cheque would loose its validity and the Reserve Bank of India further clarifies that though the Non CTS Cheque looses its value from 01.01.2019, it would still be valid as a Negotiable Instrument.

14. The decision of the Supreme Court in ***Laxmi Dyechem v. State of Gujarat[5]***, explains that the expression relating to dishonour under Section 138 is not to be read in an unduly narrow manner and that reasons such as closure of account, stop-payment instructions and signature mismatch may, depending on the circumstances, attract the provision. The principle, however, does not mean that every technical return of a cheque automatically constitutes an offence. The Court must examine whether the return is attributable to the drawer's conduct and whether the other statutory requirements are fulfilled. That assessment is ordinarily to be made on the evidence available in the complaint proceedings.

15. In the present matter, respondent No.2 has pleaded a specific loan transaction, execution of a demand promissory note and issuance of the cheque towards part payment of the alleged liability. The cheque amount is Rs.7,50,000/-, whereas the alleged loan amount is Rs.10,00,000/-. These assertions, if proved, are relevant to the existence of a legally enforceable liability. The petitioner disputes the complainant's case and relies mainly on the non-CTS endorsement. The truth or otherwise of the loan transaction, the execution and effect of the promissory note, the purpose for which the cheque was issued, and the circumstances surrounding its return are matters which

[4] NC: 2023:KHC:24782**;**
[5] (2012) 13 SCC 375

require evidence. This Court cannot conduct a mini-trial while exercising its inherent jurisdiction.

16. The power to quash criminal proceedings is to be exercised sparingly and with caution. At this stage, the Court is not required to determine whether the petitioner is ultimately guilty or whether respondent No.2 will be able to prove every ingredient of the offence. The question is whether the complaint and the material placed before the Court disclose a case which should be permitted to proceed. In view of the specific allegations regarding the loan, the demand promissory note and the issuance of the cheque towards part payment, and in the absence of undisputed material conclusively demonstrating that the complaint is legally untenable, it would be inappropriate to terminate the proceedings at the threshold.

17. It is clarified that the observations made in this order are only for the purpose of deciding the present Criminal Petition. The trial Court shall independently consider the bank return memo, the relevant RBI instructions, the evidence concerning the issuance and presentation of the cheque, the existence of legally enforceable liability and all other statutory requirements under Section 138 of the Act. The trial Court shall not treat any observation made herein as a finding on the merits of the complaint and shall decide the case on the evidence and in accordance with law.

18. **In the result,** and for the foregoing reasons, this Criminal Petition is dismissed.

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

SUNITHA GANDHAM, J

Dated: 06.11.2026
CJP/ knl