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APHC010207012014

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

FRIDAY, THE 16th DAY OF OCTOBER 2026

PRESENT

THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA

CRIMINAL REVISION CASE NO: 1960/2014

Between:

1. SIDDABATHINA VISHNU MOHAN S/O RADHA KRISHNAIAH, PROP. SRI BALAJI BULLION JEWELLERS, R/O. 404, POOJA ESTATES, SARASWATHINAGAR DARGAMITTA, NELLORE.

...PETITIONER

AND

1. GUDUGUNTA VENUGOPAL S/O RAMANAIAH, R/O. D.NO. 501, CRESCENT HEIGHTS SUJATHAMMA COLONY, DARAMITTA, NELLORE.
2. THE STATE OF ANDHRA PRADESH, REPT. BY PUBLIC PROSECUTOR, HIGH COURT, HYDERABAD.

...RESPONDENT(S):

Revision filed under Section 397/401 of Cr.P.C praying that in the circumstances stated in the affidavit filed in support of the Criminal Revision Case, the High Court may be pleased to, i) allow the CrI.R.C., by setting aside the the Judgment dt. 19-9-2014 passed in Cri.A.No. 248 of 2012 on the file of the III Addl. District and Sessions Judge, Nellore, consequently acquit the petitioner; ii) and to grant such other relief or reliefs as this Hon'ble Court deems fit and proper in the circumstances of the case.

IA NO: 1 OF 2014(CRLRCMP 3248 OF 2014

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to enlarge the petitioner herein on bail by suspending the conviction and sentence imposed in C.C.No. 549 of 2010 dt. 1-11-2012 on the file of the V Additional Judicial Magistrate of First Class, Nellore as confirmed the conviction and modified the sentence in CrI.A.No. 248 of 2012 dt. 19-9-2014 on the file of the HI Additional District and Sessions Judge, Nellore, to the extent of compensation, pending disposal of the main Criminal Revision Case.

Counsel for the Petitioner:

1. A VARALAKSHMI

Counsel for the Respondent(S):

1. V ROOPESH KUMAR REDDY
2. PUBLIC PROSECUTOR (AP)

The Court made the following order:

This Criminal Revision Case has been preferred against common judgment dated 19.09.2014 passed in Crl.A.No.248 of 2012 along with Crl.A.No.253 of 2012 on the file of the learned III Additional District and Sessions Judge, Nellore, modifying the sentence against the petitioner in judgment dated 01.11.2012 passed in C.C.No.549 of 2010 on the file of the learned V Additional Judicial Magistrate of First Class, Nellore.

2. Petitioner was convicted for an offence punishable under Section 138 of the Negotiable Instrument Act and sentenced to undergo simple imprisonment for six months and to pay compensation amounting Rs.10,00,000/- in default suffer simple imprisonment of three months.

3. Brief fact of the prosecution case is that:

Petitioner issued a cheque bearing No.245573 for an amount of Rs.10,00,000/- drawn on Indian Bank of India, Nellore, on 03.03.2010 in discharge of debt due to the complainant. Complainant presented the said cheque to his banker for collection but the said cheque was returned with an endorsement “insufficient funds”. Complainant issued legal notice to the accused asking the accused to pay the cheque amount. The accused evaded to receive the notice. Thus, petitioner lodged a private complaint before the learned Magistrate concerned under Section 138 read with 142 of the Negotiable Instruments Act (hereinafter referred as ‘the N.I.Act’). During trial, complainant was examined as PW.1, one bank official was

examined as PW.2 and several documents were marked as Exs.P1 to P8. For the defence side, petitioner was examined as DW.1 and one document was marked as Ex.D1. After hearing the parties, the learned trial Court found petitioner to be guilty for the offence punishable under Section 138 of the N.I.Act and sentenced him to undergo simple imprisonment for six months and directed to pay compensation of Rs.10,00,000/-. Against such order of conviction, two appeals were preferred, one by accused/petitioner and another by complainant. Accused challenged the order of conviction and sentence. Complainant challenged the imposition of compensation without recording it to be a fine. Both the appeals were heard together and disposed of by common judgment. Wherein by passing the common judgment, the learned appellate Court though confirmed the conviction of petitioner under Section 138 of the N.I.Act with substantive sentence but modified direction of payment of compensation in lieu of imposing a fine of Rs.10,00,000/-, which is equivalent of cheque amount and also ordered, out of the fine amount, complainant shall be compensated by paying compensation of Rs.9,50,000/-. Hence, this revision.

4. Learned counsel for the petitioner submits that Ex.P1 cheque was issued in respect of business transaction between petitioner and complainant. There is no legally enforceable debt. Learned counsel further submits that the complainant did not prove legally enforceable debt in this case. Therefore, the order of conviction is bad in law.

5. It is further ground of the petitioner that Ex.P3, legal notice, was never served upon accused/petitioner as per postal endorsement. Thus, ingredients of clause (b) of Section 138 of the N.I.Act were not complied with. In absence of service of legal notice, proceeding under Section 138 of the N.I.Act cannot be maintained.

6. Learned counsel for the 1st respondent/complainant submits that learned trial Court as well as the learned appellate Court have properly gone through the evidences on record. In this particular case, there are specific evidences i.e., Exs.P5 and P6, which shows that accused has borrowed and received money from complainant i.e. Rs.10,00,000/-. During cross examination, DW.1 has admitted that he borrowed money from complainant amounting to Rs.10,00,000/- by virtue of Exs.P5 and P6. He further submits there is direct evidence regarding receiving of money. PW.2/Bank official has specifically deposed regarding the existence of Exs.P5 and P6. Thus, in this case, legally enforceable debt has already been proved by direct evidence both oral and documentary.

7. Learned counsel for 1st respondent further argued that the legal notice was properly served through registered post upon the address of the accused but it was returned with endorsement “addressee continuously absent for 7 days”. Office copy of legal notice, returned postal cover and summons issued by Magistrate Court were marked as Exs.P3, P4 and P8. Address on the summons and address over the returned postal cover is the

same and identical, thereby, it has been proved before the learned Magistrate that accused has evaded service of statutory notice. Learned Magistrate has correctly taken view that provision under Section 27 of the General Clauses Act could be applicable here. He further submits that there is no merit to entertain the instant criminal revision.

8. Heard learned counsel for the parties. Perused the observation of the learned trial Court as well as the learned appellate Court.

9. In this case, impugned cheque was marked as Ex.P1, cheque return memo was marked as Ex.P2, office copy of legal notice was marked as Ex.P3, unserved postal cover is marked as Ex.P4, certified copy of summons to accused person issued by the learned Magistrate was marked as Ex.P8. It appears from Exs.P4 and P8 that the address of petitioner/accused in both documents is one and the same. Though the petitioner appeared before the learned Magistrate in terms of summons to accused person, but did not receive the postal registered legal notice. Learned appellate Court, in paragraph 34 has discussed the issue and is of the view that legal notice has been properly effected in this case. According to the provision of Section 27 of the General Clauses Act, if a registered consignment was addressed correctly to any person and if there are nothing otherwise to prove that the petitioner was not residing at that time in the given address which is correct. Then registration of notice itself proved proper service. In this case, learned appellate Court as well as learned trial

Court had adopted the same view. I find there is no illegality in holding that legal notice has been evaded by petitioner in this case. Hence, notice under Section 138 (c) of the N.I.Act was properly complied with.

10. In deciding, whether there exists legally enforceable debt, in this particular case, the complainant has produced and proved payment of Rs.10,00,000/- to the petitioner/accused under Exs.P5 and P6. During cross examination, petitioner has admitted the issuance of cheque of Rs.10,00,000/- for discharge of the said debt. When there is direct evidence available on record and furthermore both the Exs.P5 and P6 was proved by PW.2. There is no scope of presumption under Section 138 of the N.I.Act in this case. Complainant has sufficiently proved the existing legally enforceable debt of accused. The learned appellate Court in paragraphs 30 and 31 of impugned order has decided the issue properly. Thereby, I find no justification to interfere with the impugned order of conviction and sentence. Moreover, the finding of learned appellate Court is justifiable. Furthermore, it appears that learned trial Court has imposed substantive sentences in this case upon accused/petitioner i.e., simple imprisonment for six months and also directed to pay compensation of Rs.10,00,000/- to the complainant. But according to the provision under Section 357 Cr.P.C corresponding to Section 395 of BNSS, compensation cannot be separately recorded it should record from the amount of fine under the provisions of Section 357 Cr.P.C. Thereby, learned appellate Court has justifiably passed an order of substantive sentence along with fine amount from which a part of the fine

was ordered to be compensation in favour of the complainant. Hence, there is no illegality in the said order.

11. I find no justification to interfere with the order passed by the learned appellate Court.

12. Under the above observation, the instant Criminal Revision Case is dismissed.

13. Petitioner is directed to comply with the order of learned appellate Court within six weeks from the date of the order, by surrendering before the learned trial Court or before jail authority, failing which, learned trial Court shall issue non-bailable warrant to comply the order. Let a copy of this order be served upon the learned Court below for ready reference.

Miscellaneous petitions, if any, pending in this criminal revision case shall stand closed.

JUSTICE SUBHENDU SAMANTA

Date : 16.10.2026
SPP

THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA

CRIMINAL REVISION CASE NO: 1960 of 2014

Dated 16.10.2026

SPP