

APHC010174932009



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

[3560]

MONDAY, THE 3rd DAY OF AUGUST 2026

PRESENT

THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA

CRIMINAL REVISION CASE NO: 1194/2009

Between:

1.K. AUDI NARAYANA, S/O.ROSHAIAH R/O.CHILAKALURIPET,
GUNTUR DISTRICT.

...PETITIONER

AND

- 1.THE STATE OF A P ANOTHER, HIGH COURT, HYDERABAD.
- 2.MOHAMMED ABDUL BASHEER, S/O. MOHAMMAD MUSTAFA
BUSINESS R/O. SRUNGARAPURAM, BAPATLA, GUNTUR
DISTRICT.

...RESPONDENT(S):

Revision filed under Section 397/401 of CrPC praying that in the circumstances stated in the affidavit filed in support of the Criminal Revision Case, the High Court may be pleased to present this Memorandum of CrI. Revision Case before this Hon'ble Court aggrieved by the order Judgment passed in CrI.A.No.187/2008 dt.02.07.2009 on the file of the II Addl. Sessions Judge, Guntur modifying the sentence imposed in CCNO.146 of 2006, dt.9.4.2008 on the file of the Addl. Junior Civil Judge, Bapatla.

IA NO: 1 OF 2009(CRLRCMP 1637 OF 2009)

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 CCNO.146 of 2006, on the file of the Addl. Junior Civil Judge, Bapatla dt. 9.4.2008 as confirmed and modified the conviction and sentence in CrI.A.No.187/2008 dt. 02.07.2009 on the file of the II Addl. Sessions Judge, Guntur pending disposal of the main criminal revision case

Counsel for the Petitioner:

1. PARDHA SARADHI A V
LEGAL AID

Counsel for the Respondents:

1. PUBLIC PROSECUTOR
2. -

The Court made the following order:

1. The instant criminal revision case has been preferred against the judgment dt.02.07.2009 in CrI.A.No.187 of 2008 passed by the II Additional Sessions Judge, Guntur, (hereinafter referred to as 'appellate court') which was filed against the judgment dt.09.05.2008 in C.C. No.146 of 2006 passed by learned Additional Judicial Magistrate of First Class, Bapatla, (hereinafter referred to as '**trial court**'), whereby both the Courts found the petitioner guilty for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, "**the NI Act**").
2. Learned trial court sentenced the accused to undergo simple imprisonment for six months and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for three months. Learned trial court also directed the accused to pay compensation of Rs.42,000/- to the complainant. In appeal, learned appellate Court modified the sentence by enhancing the fine from Rs.1,000/- to Rs.10,000/- and further

directed that, out of the fine amount, a sum of Rs.8,000/- shall be paid to the complainant.

3. Sri A.V. Pardha Saradhi, learned legal aid counsel appearing for the petitioner, has argued at length. He submits that learned trial court as well as learned appellate court failed to appreciate the facts and circumstances of the case, and as such, there is miscarriage of justice. He further submits that the order of conviction and sentence passed against the petitioner is illegal and unsustainable.
4. Learned counsel has drawn the attention of this Court to the evidence (cross-examination) of P.W.1 and submits the legal notice marked as Ex.P.4 has not properly served. During cross-examination of P.W.1, it was suggested by defence that though the postal cover was shown as having been "refused" by the addressee, but that endorsement "refused" was procured by the complainant in collusion with postal peon/ authorities.
5. Learned counsel heavily argued that once such a specific suggestion had been put to P.W.1 during the cross-examination, disputing the postal endorsement on the legal notice under registered post [Ex.P.4 and the acknowledgment marked as Ex.P.6] the complainant was under an obligation to examine the concerned postal peon to prove genuineness of the endorsement.
6. Learned counsel further submits that cross-examination on that point to the complainant is sufficient to rebut the presumption that the registered

consignment was refused by the petitioner. In support of his contention, he relied upon the judgment of the Hon'ble Supreme Court rendered in **A.Rama Rao and others v. Raghu Nath Patnaik and others**¹ wherein the Hon'ble Supreme Court observed at paragraphs 6, 9 and 11 that,

“6. In support of the appeal, learned counsel for the appellants submitted that in the absence of examination of the postman it was not permissible to draw an inference of refusal. In the plaint there was no averment that the appellants had refused to receive the notice. It was only stated that they had evaded. It does not even speak of sending the notice by post or endorsement by postman. It was further pointed out that the notice is purported to have been refused on 8.4.1984 which was a Sunday. That itself shows falsity of plaintiff's claim.

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9. It appears that stand was that when the defendant No.1 on oath stated that he did not receive the notice allegedly sent by post, the same would prevail over the postal remarks that it was "refused" unless the postman was examined. Further, the plea that there was no specific averment regarding sending the notice by post or its refusal has not been considered. Learned counsel for the respondents has submitted that suit was filed on 5.4.1984 i.e. the date of refusal overlooks the plea raised to the effect that the same could have been brought in by way of an amendment and/or that the alleged date of refusal was 8.4.1984.

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11. In above view of the matter, we direct the High Court to record its findings on the question of service of notice and also the effect of the absence of any definite and specific plea regarding dispatch of notice by post and/or its refusal. Even if it is accepted that the refusal was on 5.4.1984 i.e. the date of filing of the suit nothing prevented the plaintiff to at least mention that the notice has been sent by post. The findings shall be recorded by the High Court after granting opportunity to the parties to place their respective stand. The High Court shall send its findings to this Court after recording the same within a period of three months. Call this matter after four months.”

¹ (2007)9 SCC 521

7. Learned counsel also relied on the judgment of the Hon'ble Supreme Court rendered in **Puwada Venkteswara Rao v. Chidamana Venkata Ramana**² wherein the Hon'ble Supreme Court observed that,

“A letter sent by registered post with the endorsement “refused” on the cover, could be presumed to have been duly served upon the addressee without examining the postman who had tried to effect service. But it is a rebuttable presumption. If the addressee states on oath that he had not refused the letter as it was not brought to him the sender cannot succeed without further evidence. In appropriate cases, on a closer examination of the evidence on record, the Court can reach the conclusion that the defendant had full knowledge of the notice and had actually refused it knowingly. It is not always necessary, in such cases, to produce the postman who tried to effect service. The denial of service by a party may be found to be incorrect from its own admission or conduct.”

8. He further relied on the judgment of the Bombay High Court rendered in **Meghji Kanji Patel v. Kundanmal Chamanlal Mehtani**³, wherein the Bombay High Court had held that,

“Where an ex parte decree is passed after the writ of summons has been sent to a defendant by registered post and the cover containing the summons has been returned with the postal endorsement “refused”, it is undoubtedly for the defendant to satisfy the court that the letter was not tendered to him. But the defendant can only do so by making a statement on oath. Thus must usually remain uncontroverted, unless the postman, who tendered the letter to him, is summoned and makes statement that has tendered the cover containing the summons to the defendant and after cross-examination, his evidence is believed. If the plaintiff does not summon the postman, the statement on oath of the defendant remains uncontroverted and, in such a case there is sufficient ground for setting aside the ex parte decree.”

² (1976) 2 SCC 409

³ AIR 1968 Bombay 387

9. Learned counsel for the petitioner, on the basis of the judgments referred to above, submitted that in this particular case, learned trial court and learned appellate court should have gone through the evidence of P.W.1 before recording the conviction and sentence against the petitioner. He further submits that the complainant did not examine the concerned postal peon to prove the postal endorsement "refused". In the absence of such evidence, the statutory presumption regarding service of the legal notice upon the petitioner should not have been drawn. Therefore, the conviction and sentence recorded by learned trial court and modified by learned appellate court are liable to be set aside.
10. Learned counsel further submits that enhancing the fine amount from Rs.1,000/- to Rs.10,000/- while deciding criminal appeal filed by accused, without assigning any reasons and in the absence of an appeal seeking enhancement, is illegal and unsustainable.
11. Per contra, refuting the contentions of learned legal aid counsel, learned Assistant Public Prosecutor raised a strong objection and submits that learned trial court and learned appellate court have correctly gone through the entire material available on record, including the evidence of P.Ws.1 to 3. The prosecution has sufficiently proved the guilt of the petitioner beyond all reasonable doubt, thus, the instant revision case has no merit to entertain and the same may be dismissed.

12. Heard learned counsels for the parties and perused the material available on record.
13. On a careful reading the evidence of P.W.1, it appears that, during the cross-examination, a suggestion was put to P.W.1 that the complainant had managed postal peon to have refusal remark on the postal acknowledgment. The said suggestion was categorically denied by P.W.1. It is the contention of learned counsel for the petitioner that in view of the said suggestion, Court cannot hold any presumption over the refusal remark.
14. In this particular case, though the prosecution has examined P.Ws.1 to 3 in support of its case, the petitioner did not choose to enter the witness box or not adduced any defence evidence. On thorough consideration of the observation of learned trial court as well as learned appellate court, it appears that no specific finding was rendered on the said contention. In deciding this issue, it appears that except making a suggestion in the cross-examination of P.W.1, the petitioner did not place any material on record to rebut the statutory presumption arising from Ex.P.6 regarding refusal of the registered notice.
15. In the case **A. Rama Rao** (supra1), the Hon'ble Supreme Court observed that where the postal endorsement "refused" is specifically denied on oath by the addressee, the question relating to due service of notice requires proper adjudication on the basis of the evidence available on record. Similarly, in the case **Puwada Venkateswara Rao**

(supra2), the Hon'ble Supreme Court held that an endorsement "refused" on the postal cover raises a presumption of due service upon the addressee. However, such presumption is rebuttable and the burden lies on the accused to rebut the same by producing acceptable evidence before learned trial court. In the case **Meghji Kanji Patel** (supra3), the accused entered the witness box and specifically denied on oath the postal endorsement "refused".

16. To understand the law relating to refusal of notice is mentioned hereunder:

Section 114(f) of the Indian Evidence Act deals with presumption of registered letter. The relevant provision is extracted hereunder:

“114. Court may presume existence of certain facts: The Court may presume the existence of any fact which it thinks likely to have happened regard being had to the common course of natural events human conduct and public and private business, in their relation to the facts of the particular case.

Illustration: (a)...

Illustration: (b)...

Illustration: (c)...

Illustration: (d)...

Illustration: (e)...

Illustration: (f)... that the common course of business has been followed in particular cases;

But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it:-

As to illustration (a)...

As to illustration (b)...

As to illustration (c)...

As to illustration (d)...

As to illustration (e)...

As to illustration (f):-The question is, whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances;

Section 27 of the General Clauses Act, 1897 reads as follows:

27. Meaning of service by post.- Where any [Central Act] or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression “serve” or either to the expressions “give” or “send” or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Order VI Rule 14A of CPC, also dealt with procedure of service of registered summons to defendant:

14A. Address for service of notice:

1. Every pleading, when filed by a party, shall be accompanied by a statement in the prescribed form, signed as provided in rule 14, regarding the address of the party.
2. Such address may, from time to time, be changed by lodging in Court a form duly filled up and stating the new address of the party and accompanied by a verified petition.
3. The address furnished in the statement made sub-rule (1) shall be called the “**registered address**” of the party, and shall, until duly changed as aforesaid, be deemed to be the address of the party for the purpose of service of all processes in the suit or in any appeal from any decree or order therein made and for the purpose of execution, and shall hold good, subject as aforesaid, for a period of two years after the final determination of the cause or matter.
4. Service of any process may be effected upon a party at his registered address in all respects as though such party resided there at.
5. Where the registered address of a party is discovered by the court to be incomplete, false or fictitious, the Court may, either on its own motion, or on the application of any party, order-
 - (a) in the case where such registered address was furnished by a plaintiff, stay of the suit, or

(b) in the case where such registered address was furnished by a defendant, his be struck out and he be placed in the same position as if he had not put up and defence.

6. Where a suit is stayed or a defence is struck out under sub-rule (5), the plaintiff or, as the case may be, the defendant may, after furnishing his true address, apply to the Court for an order to set aside the order of stay or, as the case may be, the order striking out the defence.
7. the Court, if satisfied that the party was prevented by any sufficient cause from filing the true address at the proper time, shall set aside the order of stay or order striking out the defence, on such term as to costs or otherwise as it thinks fit and shall appoint a day for proceeding with the suit or defence, as the case may be.
8. Nothing in this rule shall prevent the Court from directing the service of a process at any other address, if, for any reason, it thinks fit to do so.

17. In interpreting those laws, it appears that when a registered consignment returned with endorsement 'refused' and when there is no evidence or material to show that the registered consignment was sent to incorrect address, the court shall presume the endorsement to be correct and it is always regarded a good service, unless contrary has been proved by the addressee.

18. In the present case, however, though Ex.P.4 registered legal notice was returned with the endorsement "refused" under Ex.P.6, the petitioner did not enter into the witness box to deny the said endorsement on oath or he did not produce any independent evidence to establish that he had not refused the postal consignment or that he was not available at the relevant time when the postal peon approached his home for delivery of registered consignment on that registered consignment was not posted to correct address of accused.

19. In the absence of any such rebuttal evidence, it cannot be said that the presumption under Ex.P.6 is incorrect. It appears that learned trial court as well as the learned appellate court have not proceeded to pass any observation on that point simply because the petitioner has not adduced any defence evidence before them. Considering the same, the argument advanced by learned legal aid counsel appearing for the petitioner regarding non-service of the statutory notice appears to be not justified and cannot be accepted at this stage.
20. However, while considering the quantum of sentence, it is noticed that the learned appellate court enhanced the fine amount from Rs.1,000/- to Rs.10,000/- while disposing of the criminal appeal.
21. I have perused the judgment of learned appellate court, wherefrom it appears that no reasons whatsoever have been assigned for enhancing the fine amount. Thus, enhancement of fine amount by learned appellate court is illegal and improper and the same is accordingly set aside.
22. The petitioner shall suffer simple imprisonment for six months and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for three months. Since the compensation of Rs.8,000/- was granted to the complainant by learned appellate court, I find no justification to interfere with.
23. Accordingly, the criminal revision case is disposed of with the above modification.

24. The order suspending the sentence during the pendency of the criminal revision case shall stand vacated. The petitioner is directed to surrender before the learned trial Court or the concerned jail authorities within eight (8) weeks from the date of receipt of a copy of this order to undergo the remaining period of sentence. In default, learned trial court shall take appropriate steps, including issuance of a non-bailable warrant, to secure the presence of the petitioner and enforce the sentence in accordance with law.
25. Since the petitioner has not appeared before this Court and was represented through the learned legal aid counsel, the State is directed to communicate the copy of this order to the petitioner forthwith.
26. A copy of this judgment shall also be transmitted to the learned trial court for ready references and necessary compliance.
27. The assistance of learned legal aid counsel is appreciated.
28. Miscellaneous petitions, if any, pending in this criminal revision case shall stand closed.

JUSTICE SUBHENDU SAMANTA

Dt.03.08.2026

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