APHC010356842010

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

SATURDAY, THE 19th DAY OF SEPTEMBER 2026

PRESENT

THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA

CRIMINAL REVISION CASE NO: 223/2010

Between:

1. KOMMISETTI VENKATA SATYANARAYANA,, S/O. SUBBA RAO, BUSINESS, SUNDAY MARKET, BHIMAVARAM (BHIMAVARAM I TOWN POLICE STATION)

...PETITIONER

AND

1. BATTU VWEERA VENKATA SATYANARAYANA AND ANOTHER, S/O. GOVARDHAN RAO, PEDDY COMMISSION AND TIP-TOP BUSINESS, MAHADEVAPATNAM, (UNDI POLICE STATION LIMITS)
2. THE STATE OF A P, REP BY PUBLIC PROSECUTOR, HIGH COURT OF A.P., HYDERABAD.

...RESPONDENT(S):

Revision filed under Section 397/401 of CrPC praying that in the circumstances stated in the affidavit filed in support of the CriminalRevisionCase, the High Court may be pleased toto setaside the Judgment passed by the learned III Additional District and Sessions Judge (Fast Track Court), Bhimavaram in Crl.A.No. 192 of 2007 dated08.10.2009 wherein he set a side the sentence and judgment passed by the learned Judicial Magistrate I Class, Bhimavaram in CC.No. 102 of 2006 and to convict the accused under Sec,138 of N.I. Act

Counsel for the Petitioner:

1. K L N SWAMY

Counsel for the Respondent(S):

1. PUBLIC PROSECUTOR

The Court made the following Order:

The instant Criminal Revision has been preferred against a judgment dated 08.10.2009 passed by learned III Additional District & Sessions Judge (Fast Track Court), Bhimavaram in Criminal Appeal No.192 of 2007, wherein and whereunder he set aside the order of conviction and sentence passed by the learned Judicial I Class Magistrate-cum-Principal Junior Civil Judge, Bhimavaram in C.C.No.102 of 2006.

2. The brief fact of the prosecution case is that the petitioner, being the complainant, lodged a complaint before the learned Trial Court, alleging, *inter alia,* that the accused had borrowed an amount of Rs.50,000/- from the complainant on 13.02.2003 and executed a promissory note agreeing to repay the same with interest at the rate of 36% per annum. On several demands made by the complainant for repayment, the accused has issued a cheque for Rs.30,000/- drawn on the Andhra Bank, Mahadevipatnam Branch towards part payment of the amount. The complainant has presented the said cheque for collection through his banker, but it was returned unpaid with a Memo, dated 18.06.2003, with an endorsement “funds insufficient”. It was informed to the accused through a legal notice, but he did not pay such amount. Hence, he lodged a complaint under Section 138 of Negotiable Instruments Act, 1881 (*hereinafter referred to as ‘the N. I. Act’*). During trial, the learned Trial Court has recorded the evidence of the petitioner as P.W.1 and accused as D.W.1, some documents were marked before the learned Trial Court as Exs.P1 to P6

including the postal acknowledgment, cheque return memo, office copy of legal notice etc.. After hearing the parties, the learned Trial Court is of the view that the petitioner has successfully proved the charge against the accused under Section 138 of N. I. Act and the learned Court below found accused to be guilty for the offence punishable under Section 138 of N. I. Act and convicted him under Section 138 of N. I. Act and imposed simple imprisonment for a period of six (06) months and to pay a fine of Rs.5,000/-. The order of conviction was under challenge before the learned Appellate Court. After hearing the parties, the learned Appellate Court has set aside the order of conviction and acquitted the accused. Hence, the petitioner has filed the instant Criminal Revision against the reversal finding.

3. Heard the learned counsel for the petitioner and the learned Assistant Public Prosecutor representing the State.

4. I have perused the impugned order passed by the learned Appellate Court. The only ground, which was considered by the learned Appellate Court that the petitioner being the complainant lodged a complaint before the learned Magistrate for commission of offence under Section 138 of N. I. Act and again filed a Suit on the basis of a promissory note. The statement made in the complaint and the Suit filed by the petitioner are contradictory to each other; on the basis of which, the learned Appellate Court is of the view that there was no legally enforceable debt. But the cheque was issued blank in

favour of the complainant, and thereafter, the complainant has put the borrowed amount over the cheque.

5. I have also perused the observations of the learned Appellate Court and considered its findings at paragraphs 16 and 17 of the said impugned judgment. It is true that in order to prove the prosecution case, the petitioner has to establish that there is a legally enforceable debt upon the accused and to remit the same and discharge the liability, a cheque was issued to complainant but the cheque was dishonored. In this case, though the cheque was dishonored, there was no existence of legally enforceable debt against the accused person. The cheque and promissory note consisting of same transaction, but impugned facts are different in criminal case and this proceeding.

6. It further appears that the accused has appeared as D.W.1, and as such, placed the entire facts relating to the filing of the Suit before the learned Trial Court. The learned Trial Court has not considered the said evidence of P.W.1. Accordingly, there is illegality in recording the conviction and sentence.

7. I find no justification to interfere with the order passed by the learned Appellate Court. Accordingly, the order of acquittal passed by the learned Appellate Court is sustained.

8. With the above observations, the instant Criminal Revision is dismissed as devoid of merits.

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

SUBHENDU SAMANTA, J

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THE HON'BLE SRI JUSTICE SUBHENDU SAMANTA

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19.09.2026

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