

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

WEDNESDAY, THE ELEVENTH DAY OF DECEMBER  
TWO THOUSAND AND TWENTY FOUR



PRESENT

THE HONOURABLE DR JUSTICE VENKATA JYOTHIRMAI PRATAPA

CRIMINAL PETITION NO: 1098 OF 2022

**Between:**

Kanamarlapudi Sravana Srinivasa, S/o Srinivasulu, Age 30 years,  
D.No.10/400, Flat No. 201 Santhapeta, Nellore city.

...Petitioner/A3

**AND**

1. The State of Andhra Pradesh, Rep by its Public Prosecutor, High Court Buildings, Amaravathi.
2. Sri. Kanamarlapudi Venkata Prasad, S/o Late Venkata Swami, Age 40 years, Door No.23-1173, Aravinda Nagar, Nellore.

...Respondent / Defacto Complainant

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court pleased to call for the records pertaining to the C.C.No.3061 of 2021 on the file of the court of II Additional Judicial Magistrate of I Class, Nellore and quash the same.

(Note: C.C.No.3061 of 2020 is amended as C.C.No.3061 of 2021 as per the Court Order dated 11.09.2024 in I.A.No.02 of 2024 in CRLP.No.1098 of 2022)

**I.A. NO: 1 OF 2022**

Petition under Section 482 of Cr.P.C 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 the appearance of the petitioner in C.C.No.3061 of 2021 on the file of the Court of II Additional Judicial Magistrate of I Class, Nellore.

This Petition coming on for hearing, upon perusing the Memorandum of Grounds of Criminal Petition and upon hearing the arguments of M/s. Y L Siva Kalpana Reddy, Advocate for the Petitioner and the Public Prosecutor on behalf of the Respondent No. 1 and Sri. Siva Prasad Reddy Venati, Advocate for the Respondent No.2.

**The Court made the following:**

APHC010068682022

IN THE HIGH COURT OF ANDHRA  
PRADESH  
AT AMARAVATI

(Special Original Jurisdiction) [3396]



WEDNESDAY, THE ELEVENTH DAY OF DECEMBER  
TWO THOUSAND AND TWENTY FOUR

**PRESENT**

**THE HONOURABLE SMT.JUSTICE VENKATA JYOTHIRMAI PRATAPA**

**CRIMINAL PETITION NO: 1098/2022**

**Between:**

KANAMARLAPUDI SRAVANA SRINIVASA, S/O SRINIVASULU, AGE 30  
YEARS, D.NO.10/400, FLAT No.201, SANTHAPETA, NELLORE CITY.

**...PETITIONER/ACCUSED**

**AND**

- 1.THE STATE OF ANDHRA PRADESH, REP BY ITS PUBLIC PROSECUTOR, HIGH COURT BUILDINGS, AMARAVATHI.
- 2.SRI KANAMARLAPUDI VENKATA PRASAD, S/O LATE VENKATA SWAMI, AGE 40 YEARS, DOOR NO.23-1173, ARAVINDA NAGAR, NELLORE.

**...RESPONDENT/COMPLAINANT(S):**

**Counsel for the Petitioner/accused:**

- 1.Y L SIVA KALPANA REDDY

**Counsel for the Respondent/complainant(S):**

- 1.SIVAPRASAD REDDY VENATI
- 2.PUBLIC PROSECUTOR (AP)

**The Court made the following:**

**ORDER:**

The instant petition under Section 482 of Code of Criminal Procedure, 1973<sup>1</sup> has been filed by the Petitioner/Accused No.3, seeking quashment of the proceedings against him in C.C.No.3061 of 2021 on the file of the Court of II Additional Judicial Magistrate of First Class, Nellore

<sup>1</sup> for short 'Cr.P.C'

for the offences under Sections 406 and 420 read with 34 of the Indian Penal Code, 1860<sup>2</sup>.

2. Heard Ms.Y.L.Sivakalpana Reddy, learned counsel for the Petitioner, Sri Sivaprasad Reddy Venati, learned counsel for Respondent No.2. Ms.K.Priyanka Lakshmi, learned Assistant Public Prosecutor for State/Respondent No.1 is in attendance.

3. Learned counsel for the Petitioner/Accused No.3 would submit that the Petitioner is a student and simply because he is the son of Accused No.1, he was falsely implicated in the present case. Learned counsel would further submit that the complaint does not disclose any allegation against the Petitioner and except witnessing the alleged transaction, the Petitioner has not committed any offence as alleged. The allegations leveled in the charge sheet are false and concocted to implicate the Petitioner in the present case. Hence, prayed to quash the proceedings against the Petitioner.

4. Learned counsel for Respondent No.2, would submit that there are specific allegations against the Petitioner and the same have to be decided during trial. Learned counsel would further submit that the Petitioner along with the other Accused has committed the alleged offences. Learned counsel would submit that there are no tenable grounds to quash the proceedings against the Petitioner, at this stage. Hence, prayed for dismissal of the petition.

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<sup>2</sup> for short 'I.P.C.'



### Point for Determination

5. Having heard the submissions of the learned counsel representing both the parties, now the point that would emerge for determination is:

*Whether the proceedings against the Petitioner/Accused No.3 in C.C.No.3061 of 2021 on the file of the Court of II Additional Judicial Magistrate of First Class, Nellore, are liable to be quashed by exercising jurisdiction under Section 482 of the Cr.P.C.?*

### Determination by the Court

6. A bare perusal of Section 482 makes it clear that the Code envisages that inherent powers of the High Court are not limited or affected so as to make orders as may be necessary; (i) to give effect to any order under the Code or, (ii) to prevent abuse of the process of any Court or, otherwise (iii) to secure ends of justice. A court while sitting in Section 482 jurisdiction is not functioning as a trial court, court of appeal or a court of revision. It must exercise its powers to do real and substantial justice, depending on the facts and circumstances of the case. These powers must be invoked for compelling reasons of abuse of process of law or glaring injustice, which are against sound principles of criminal jurisprudence.

7. The decision rendered by the Hon'ble Apex Court in ***State of Haryana and others v. Bhajanlal and others***<sup>3</sup> is considered as the guiding torch in the exercise of power under Section 482 Cr.P.C. At paras 102 and 103, the circumstances necessary to invoke this jurisdiction are spelt out as follows;

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<sup>3</sup> AIR 1992 SC 604

*"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*



(6) *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

(7) *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.*

**103.** *We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."*

(emphasis supplied)

8. In the case on hand, as seen from the complaint, Accused No.1 is the elder brother of Respondent No.2. Accused No.1 had taken an amount of Rs.27.00 lakhs for the purpose of business and also had taken 26 sovereigns of gold from him on the promise that he would return the same after returning from a function. Thereafter, Accused No.1 failed to return the amount and the gold to Respondent No.2. Whereas, the contents of the charge sheet would disclose that, Accused No.1 has been running pawn broker business in the name and style of Radha Pawn Brokers and during the course of business, Accused No.1 used to obtain amounts from Respondent No.2 and return the same. While so, on 01.04.2019 Accused No.1 along with Accused Nos.2 and 3 went to the house of Respondent No.2 and had obtained an amount of

Rs.27.00 lakhs from him and executed two promissory notes. Further, on 08.01.2021 Accused No.1 had taken 26 sovereigns of gold from Respondent No.2 promising to return the same after attending a function and the same was obtained in the presence of Accused Nos.2 to 5, but Accused No.1 did not return the same and thereby cheated him.

9. As seen from the complaint, there is not even a single allegation against the Petitioner/Accused No.3 in the commission of the alleged offences. It is alleged in the charge sheet that in the presence of Petitioner/Accused No.3, his father i.e., Accused No.1 had taken cash and gold. As such, the present case has been registered against the Petitioner along with the other Accused for the offences under Sections 406 and 420 IPC. It would be necessary to examine whether the allegations made against the Petitioner would attract the ingredients of the above offences.

***"405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".***

***415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".***



10. In order to punish a person under Sections 406 and 420 IPC, entrustment of the property is an essential ingredient. In the case on hand, as seen from the complaint as well as the charge sheet, there is no single allegation about the entrustment of the cash and gold ornaments of Respondent No.2 to the Petitioner/Accused No.3. It was Accused No.1, who had taken the same from Respondent No.2. Further, there is no specific allegation against the Petitioner to attract the offences of criminal breach of trust and cheating which is punishable under Sections 406 and 420 IPC.

11. Further more, as rightly put by the learned counsel for the Petitioner/Accused No.3, merely because he is the son of Accused No.1, in the absence of any allegations *prima facie* to attract the alleged offences, he cannot be implicated in the present case. Except the allegation in the charge sheet that Accused Nos.2 to 5 instigated Accused No.1, there is no iota of evidence to prove the same. Further, the false implication of the Petitioner in the present case, may affect his career prospects. Except making vague and omnibus allegations against the Petitioner/Accused No.3 with an ulterior motive to tune Accused No.1 to his terms, no *prima facie* case is made out against the Petitioner for the alleged offences.

12. In view of the guideline No.3 in *Bhajanlal's case (supra)*, the allegations made in the FIR or complaint, do not disclose the commission of the alleged offence by the Petitioner/Accused No.3. This Court finds that there are justifiable grounds to exercise its jurisdiction under Section 482 Cr.P.C. Therefore, as the very ingredients of the offending Sections are not attracted against the

Petitioner/Accused No.3, in the above crime, criminal proceedings initiated against him are liable to be quashed.

13. In result, the Criminal Petition is allowed and the proceedings against Petitioner/Accused No.3 in C.C.No.3061 of 2021 on the file of the Court of II Additional Judicial Magistrate of First Class, Nellore for the offences under Sections 406 and 420 read with 34 IPC are hereby quashed.

Pending miscellaneous petitions, if any, shall stand closed.

**Sd/- M RAMESH BABU**  
**DEPUTY REGISTRAR**

**//TRUE COPY//**

**SECTION OFFICER**

**To,**

1. The II Additional Judicial Magistrate of I Class, Nellore.
2. The Station House Officer, Nellore VI Town, Sri Potti Sri Ramulu Nellore District.
3. One CC to M/s. Y L Siva Kalpana Reddy, Advocate [OPUC]
4. One CC to Sri. Y. Siva Prasad Reddy Venati, Advocate [OPUC]
5. Two CCs to Public Prosecutor, High Court of Andhra Pradesh [OUT]
6. Three CD Copies

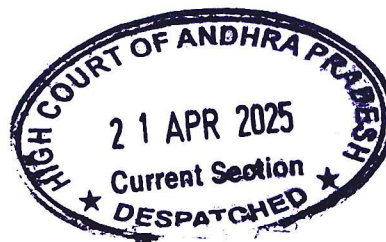
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**HIGH COURT**

**DATED:11/12/2024**

**ORDER**

**CRLP.No.1098 of 2022**



**ALLOWING THE CRIMINAL PETITION**