



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

[3396]

**TUESDAY, THE EIGHTEENTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY FIVE**

PRESENT

**THE HONOURABLE DR. JUSTICE VENKATA JYOTHIRMAI PRATAPA
CRIMINAL PETITION NO: 3514/2022**

Between:

1. SEW INFRASTRUCTURE LIMITED, REP. BY ITS MANAGING DIRECTOR, 6-3-871, SNEHALATA, 1ST FLOOR, GREENLANDS ROAD, BEGUMPET, HYDERABAD 500 016
2. V. RAJASEKHAR, MANAGING DIRECTOR OF SEW INFRASTRUCTURE LIMITED, 6-3-871, SNEHALATA, 1ST FLOOR, GREENLANDS ROAD, BEGUMPET, HYDERABAD 500 016

...PETITIONER/ACCUSED(S)

AND

1. THE STATE OF ANDHRA PRADESH, . REP BY ITS PUBLIC PROSECUTOR, HIGH COURT OF HYDERABAD, AMARAVATHI.
2. PUTTA SUDHAKAR SUDHAKAR YADAV, MANAGING PARTNER OF M/S. P.S.K. INFRASTRUCTURES AND PROJECTS PRIVATE LIMITED, FLAT NO. 51, NAGARJUNA HILLS, PUNJAGUTTA, HYDERABAD

...RESPONDENT/COMPLAINANT(S):

Counsel for the Petitioner/accused(S):

1. D S SIVADARSHAN

Counsel for the Respondent/complainant(S):

1. VENKAT CHALLA
2. PUBLIC PROSECUTOR (AP)

The Court made the following:

ORDER:

The instant petition under Section 482 of Code of Criminal Procedure, 1973¹ has been filed by the Petitioners/Accused Nos.1 and 2, seeking to quash the proceedings against them in C.C.No.202 of 2019 on the file of the

¹ for short 'Cr.P.C'

Court of Judicial Magistrate of First Class, Mydukur, which was registered for the offence punishable under Sections 138, 139 and 142 of the Negotiable Instruments Act, 1881².

2. Heard Sri Avinash Desai, learned counsel for the Petitioners and Sri Venkat Challa, learned counsel for Respondent No.2. Ms.K.Priyanka Lakshmi, learned Assistant Public Prosecutor is in attendance.

3. Learned counsel for the Petitioners would submit that the present complaint, which has been filed by Respondent No.2, who is neither payee nor holder of the subject cheque, is not maintainable under Section 138 of N.I.Act. Learned counsel would further submit that the payee of the subject cheque neither issued any statutory notice nor filed any complaint and hence, the cognizance taken by the learned Magistrate is an abuse of process of law. Learned counsel would submit that, Respondent No.2 has no *locus standi* and is not entitled to file the present complaint against the Petitioners. Learned counsel would finally submit that there is no legally enforceable debt against the Petitioners. Hence, prayed for quashment of the proceedings against the Petitioners. In support of his contentions, learned counsel has placed reliance on the judgment of the Hon'ble Apex Court in **National Small Industries Corporation Limited vs. State (NCT of Delhi) and Others**³.

4. Contrasting the same, learned counsel for Respondent No.2 would submit that the exemption under Section 200(a) Cr.P.C can be given to a public servant only. Learned counsel would further submit that there is no

² for short 'NI Act'

³ (2009) 1 SCC 407

dispute about the issuance of the subject cheque by the Petitioners. It is submitted the present complaint has been filed by Respondent No.2, who is the Managing Partner of the Complainant-Company and as such, the same is maintainable under law. Learned counsel would finally submit *prima facie* case is made out against the Petitioners and, as such, at the threshold, the case against the Petitioners cannot be quashed. Hence, prayed for dismissal of the petition. In support of his contentions, learned counsel has placed reliance on the judgments of the Hon'ble Apex Court in **TRL Krosaki Refractories Limited vs. SMS Asia Private Limited and another**⁴, wherein, it was held as under:

"In that view, the position that would emerge is that when a company is the payee of the cheque based on which a complaint is filed under Section 138 of N.I. Act, the complainant necessarily should be the Company which would be represented by an employee who is authorized. Prima facie, in such a situation the indication in the complaint and the sworn statement (either orally or by affidavit) to the effect that the complainant (Company) is represented by an authorized person who has knowledge, would be sufficient. The employment of the terms "specific assertion as to the knowledge of the power of attorney holder" and such assertion about knowledge should be "said explicitly" as stated in A.C. Narayanan (supra) cannot be understood to mean that the assertion should be in any particular manner, much less only in the manner understood by the accused in the case. All that is necessary is to demonstrate before the learned Magistrate that the complaint filed is in the name of the "payee" and if the person who is prosecuting the complaint is different from the payee, the authorisation therefor and that the contents of the complaint are within his knowledge. When, the complainant/payee is a company, an authorized employee can represent the company. Such averment and prima facie material is sufficient for the learned Magistrate to take cognizance and issue process. If at all, there is any serious dispute with regard to the person prosecuting the complaint not

⁴ (2022) 7 SCC 612

being authorized or if it is to be demonstrated that the person who filed the complaint has no knowledge of the transaction and, as such that person could not have instituted and prosecuted the complaint, it would be open for the accused to dispute the position and establish the same during the course of the trial. As noted in Samrat Shipping Co. Pvt. Ltd. (supra), dismissal of a complaint at the threshold by the Magistrate on the question of authorisation, would not be justified. Similarly, we are of the view that in such circumstances entertaining a petition under Section 482 to quash the order taking cognizance by the Magistrate would be unjustified when the issue of proper authorisation and knowledge can only be an issue for trial.

Learned counsel for Respondent No.2 has further relied on the judgment of the Hon'ble Apex Court in **Bhupesh Rathod vs. Dayashankar Prasad Chaurasia and another**⁵, wherein, it was held as under:

“17. We must say at the inception that the respondent not having disputed his signatures on the cheques, it was for the respondent to show in what circumstances the cheques had been issued, i.e., why was it not a cheque issued in due course. The words of Section 139 of the NI Act are quite clear that unless the contrary is proved, it shall be presumed that the holder of the cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability. The respondent has not set up a case that the nature of transaction was of the nature which fell beyond the scope of Section 138. Other than taking a technical objection, really nothing has been said on the substantive aspect.

18. The only eligibility criteria prescribed under Section 142(1)(a) is that the complaint must be by the payee or the holder in due course.

22. It is also relevant to note that a copy of the Board Resolution was filed along with the complaint. An affidavit had been brought on record in the trial court by the Company, affirming to the factum of authorisation in favour of the Managing Director. A Manager or a Managing Director ordinarily by the very nomenclature can be taken to be the person in-charge of the affairs Company for its day-to-day management and within the activity would certainly be calling the act of approaching the

⁵ (2022) 2 SCC 355

court either under civil law or criminal law for setting the trial in motion.⁴ It would be too technical a view to take to defeat the complaint merely because the body of the complaint does not elaborate upon the authorisation. The artificial person being the Company had to act through a person/official, which logically would include the Chairman or Managing Director. Only the existence of authorisation could be verified.

26. In our view, one of the most material aspects is, as stated aforesaid, that the signatures on the cheques were not denied. Neither was it explained by way of an alternative story as to why the duly signed cheques were handed over to the Company. There was no plea of any fraud or misrepresentation. It does, thus, appear that faced with the aforesaid position, the respondent only sought to take a technical plea arising from the format of the complaint to evade his liability. There was no requirement of a loan agreement to be executed separately as any alternative nature of transaction was never stated."

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 there are any justifiable grounds for quashment of the proceedings against the Petitioners/Accused Nos.1 and 2 in C.C.No.202 of 2019 on the file of the Court of Judicial Magistrate of First Class, Mydukur?

Determination by the Court:

6. A bare perusal of Section 482 Cr.P.C 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 Cr.P.C jurisdiction is not functioning as a 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 case of Respondent No.2/Complainant, in brief, is that, the Complainant is the sub-contractor and has been doing contract works. Accused No.1 is the Company and Accused No.2 is its Managing Director. Accused got tender work for widening to 4/6 lanes and upgrading of the existing 2-lane road including minor bridges, service roads and auxiliary works in A.P between Km 49 (Champavali River) and Km 97 (Srikakulam) of the Visakhapatnam to Itchapuram Section of NH-5. As the Accused have no sufficient man power, material and machinery, Accused No.2 had given sub-contract to the Complainant to execute the said works on back to back basis and there exists an agreement dated 26.12.2005 between them to that effect. After completion of the said works, Complainant requested the Accused to pay the bill amount of Rs.7,20,00,000/-, but the Accused postponed the same. Thereafter, inspite of several demands, Accused had given seven post dated cheques bearing Nos.591341 to 591346 for Rs.1,00,00,000/- each and 591347 for Rs.1,20,00,000/- drawn on Punjab National Bank, Somajiguda Branch, Hyderabad in favour of the Complainant. On presentation of the 1st cheque, as the same was dishonoured, the Complainant got issued a registered legal notice to the Accused and on receipt of the said notice, the Accused have paid the 1st and 2nd cheques amount to the Complainant.

Subsequently, on presentation of the third cheque before Andhra Bank, Muydukur, the said cheque was returned with an endorsement "Account Closed". Then the Complainant got issued a statutory notice dated 23.04.2018 to the Accused demanding to pay the cheque amount. Having received the said notice, the Accused have not repaid the amount. Hence, the complaint.

8. On a bare perusal of the copy of the complaint, it clearly shows that, in the title of the complaint, the Complainant is described as Putta Sudhakar @ Sudhakar Yadav, Managing Partner of M/s.P.S.K.Infrastructure and Projects Private Limited. The cheque in question was issued in favour of the Company and it was forwarded for encashment in the account of the said Company. On an overall consideration of the said facts, it can be inferred that the Complainant has filed the complaint on behalf of the Company in his capacity as its Managing Partner and not in his personal capacity. Had the complaint been filed by the Complainant in his personal capacity, there was no occasion for him to mention his status in M/s.P.S.K.Infrastructure and Projects Private Limited. The Petitioners are trying to take advantage of the fact that, instead of describing the Complainant as M/s.P.S.K.Infrastructure and Projects Private Limited through the Managing Partner, in the title, name of the Complainant is mentioned as Putta Sudhakar @ Sudhakar Yadav, Managing Partner of M/s.P.S.K.Infrastructure and Projects Private Limited. In such circumstances, this Court is of the view that, it is a technical issue and it is also apparent that for all practical purposes, the complaint has been filed in

the name of the Company through the Managing Partner Putta Sudhakar and not in his personal capacity.

9. Further, the Accused have not denied the issuance of the subject cheque. Such being the case, the contention of the learned counsel for the Petitioners that there is no legally enforceable debt between the Accused and the Complainant has no force. There is no plea of any fraud or misrepresentation. The Petitioners only have taken a technical plea arising from the format of the complaint, to evade their liability. The judgments relied on by the learned counsel for Respondent No.2 are helpful to his case.

10. In view of the foregoing discussion and the judgments referred to *supra*, this Court is of the view that there are no valid grounds emanating from the record warranting interference of this Court to quash the case against the Petitioners/Accused Nos.1 and 2. The Petition lacks merit and hence, the same is liable to be dismissed.

11. In the result, the Criminal Petition is dismissed.

Pending miscellaneous petitions, if any, shall stand closed.

Dr.JUSTICE VENKATA JYOTHIRMAI PRATAPA

Date:18.02.2025

Dinesh

HON'BLE DR. JUSTICE VENKATA JYOTHIRMAI PRATAPA

CRIMINAL PETITION No.3514 of 2022

Dt.18.02.2025

Dinesh