

**IN THE HIGH COURT OF ANDHRA PRADESH, AMARAVATI**

CRIMINAL PETITION No. 15330 of 2013**Between:**

P. Pramod Deepak Chaitanya,
S/o.P.Sundara Ratnam, Aged about 33 years,
Occupation: Area Receivable Manager,
O/o.Cholamandalam Investment and Finance Company Limited,
Second Floor, Sunshine Plaza, Ramalingapuram,
Nellore, SPSR Nellore District.

... Petitioner/Accused No.3

And

1. The State of A.P., Represented by Public Prosecutor,
High Court of A.P., Amaravati.
2. Yellapeddi Shoba, W/o.Narayana Rao,
Age not known, Occupation: Assistant General Manager,
S.B.I., O/o.Barracks Centre, Achari Street,
Nellore City, SPSR Nellore District.

... Respondents

DATE OF JUDGMENT PRONOUNCED: **14-06-2023****SUBMITTED FOR APPROVAL:****THE HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA**

1. Whether Reporters of Local Newspapers
may be allowed to see the judgment? Yes/No
2. Whether the copies of judgment may be
marked to Law Reporters / Journals? Yes/No
3. Whether His Lordship wish to
see the fair copy of the Judgment? Yes/No

DUPPALA VENKATA RAMANA, J



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! Counsel for Petitioner : Sri V.R.Reddy Kovvuri

^ Counsel for Respondents : Asst.Public Prosecutor

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> Head Note:

? Cases referred:

1. 1977 (2) SCC 699
2. AIR 1992 SC 604
3. 2013 (1) ALD (Cr1.) 652 (AP)
4. 2008 AIR SCW 6910

This Court made the following:

**HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA****CRIMINAL PETITION No. 15330 of 2013****ORDER:**

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C") by the petitioner/A.3 seeking to quash the proceedings in Crime No.249 of 2013 of I Town Police Station, Nellore, registered for the offence under Sections 403, 419 and 420 IPC.

2. The gist of the allegations set out in the said report germane for disposal of the criminal petition may be stated as follows:

(i) On 10.12.2013 the 2nd respondent/Assistant General Manager, State Bank of India gave a complaint to the I Town Police, Nellore alleging that a cheque was issued by A.2-Akkireddy Konda Reddy, Proprietor of M/s.S.R.Enterprises/A.1 firm for Rs.4,70,634/- in favour of "Cholamandal Investment and Finance Company Limited". The cheque was inadvertently passed for payment by the 2nd respondent-Bank on 17.10.2012 while clearing through ICICI Bank, Nellore. After coming to know about the erroneous payment made by the bank, the 2nd respondent-bank addressed a letter to A.1 to A.3 requesting to repay the amount which was credited in the loan account of A.2.



Taking undue advantage, they have not repaid the same. When the Bank officials visited the house of A.2 many times, he was not available, though he is liable to pay the amount to the bank. Hence, the 2nd respondent gave a report for taking appropriate action against A.1 to A.3. On the basis of the same, a case in Crime No.249 of 2013 was registered in I Town Police Station, Nellore against M/s.S.R.Enterprises-A.1 firm, Akkireddy Konda Reddy/A.2, who is the Proprietor of A.1 firm and the Manager, Cholamandal Investment and Finance Company Limited/A.3, for the offences punishable under Sections 403, 419 and 420 IPC.

(ii) The 2nd accused, who is the Proprietor of A.1-firm availed a loan from the petitioner/A.3 company for an amount of Rs.6,40,000/- vide loan agreement No.XSHUNLR 00000555161, dated 31.01.2011 and issued a cheque bearing No.323656 dated 08.10.2012 for an amount of Rs.4,70,634/- to discharge their liability. The said cheque was presented by petitioner/A.3 through ICICI Bank, Nellore, for clearance and the amount was credited into the loan account of A.1 and A.2. The alleged transaction took place on 18.10.2012. The 2nd respondent-Bank, without taking any steps, to realize their amount from A.1 and A.2, resorted to file the present complaint after lapse of 14 months for the reasons best known to the 2nd respondent-Bank



and sent a letter dated 15.02.2013 requesting A.3-Company to return the cheque amount of Rs.4,70,634/- for which A.3-Company has issued a reply letter dated 18.02.2013 stating that the loan account was closed and they are not in a position to return the said amount. During the pendency of the investigation, the present Criminal Petition is filed by the Petitioner/Accused No.3 to quash the proceedings against him in the above crime.

3. Learned counsel for the Petitioner/A.3 would submit that the Petitioner/A.3 is not at all responsible for the entire transaction and even to repay the amount to the 2nd respondent-bank. If at all the officials of the 2nd respondent-Bank inadvertently cleared the cheque and credited the amount to the loan account of A.2, it is their duty to proceed against A.1 and A.2. He would further submit that continuation of criminal proceedings against the petitioner/A.3 is an abuse of process of the Court. Therefore, he prays to quash the FIR against petitioner/A.3.

4. The learned Assistant Public Prosecutor would submit that though all the accused are having knowledge that A.1 and A.2 have insufficient funds in their account, directed petitioner/A.3 to present the cheque for collection and inadvertently, the 2nd



respondent-Bank cleared the cheque. Immediately after noticing the same, 2nd respondent-Bank requested A.1 and A.2 and petitioner/A.3 to repay the same, but on several reminders, they did not respond to repay the same. Therefore, the allegations in the complaint disclose the necessary ingredients for the commission of the offence and a *prima facie* case is made out against the petitioner/A.3 and the matter is criminal in nature. He prays to dismiss the petition.

5. Now the point for consideration is:

Whether there are any merits in the criminal petition to allow?

POINT:

6. In a decision of Hon'ble Supreme Court in **State of Karnataka Vs. L.Muniswamy**¹, it was observed as under:

"...the wholesome power under Section 482 Cr.P.C, entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of process of the Court or that the ends of justice require that the proceeding ought to be quashed. The High Court have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A Court proceeding ought not to be permitted to degenerate into a weapon of harassment or prosecution....."

¹ 1977 (2) SCC 699



7. Besides the above decision, it should be noted that in **State of Haryana & Others Vs. Ch.Bhajanlal and Others**² the Hon'ble Apex Court has laid down the following guidelines as to when the High Court can exercise its plenary powers under Section 482 Cr.P.C to quash the proceedings to prevent abuse of process of the Court. They are,

(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 F.I.R. 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

² AIR 1992 SC 604



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.

8. As can be seen from the above guidelines, even if the complaint allegations are accepted to be true on their face value, if they do not constitute an offence against the accused, then the FIR can be quashed against the accused.

9. In the instant case, A.1 and A.2 availed a loan from Petitioner/A.3 and issued a cheque to discharge their loan amount and when petitioner/A.3 presented the same through ICICI Bank for collection, rightly or wrongly or due to inadvertence, the 2nd respondent-Bank cleared the cheque and the amount was credited to the petitioner's account and the said account was closed. When the notice was issued by the 2nd respondent-Bank to A.1 and A.2 and petitioner/A.3, Petitioner/A.3 issued a reply on 18.03.2013 stating that, after crediting the amount, the loan account of the drawer got closed and they are not able to return the said amount, whereas, A.1 and A.2 have not responded. In these circumstances, the above aspect would show the *prima facie* ingredients that there was a transaction between A.1 to A.3 and the 2nd respondent-bank and



the amount was credited to the loan account of A.1 and A.2. But, the Petitioner/A.3 is not found fault with and it is the fault of A.1 and A.2. Having knowledge that they do not have sufficient funds in their account, A.1 and A.2 issued the said cheque and inadvertently, the 2nd respondent-Bank credited the amount to the loan amount of A.1 and A.2. When the 2nd respondent-bank issued a notice requesting A.1 and A.2 to repay the amount, they have not responded. Therefore, A.1 and A.2 are responsible for dishonestly issuing a cheque having knowledge that there were no sufficient funds and they are responsible for the commission of the offence, but not against the petitioner/A.3.

10. In a similar set of facts and circumstances, in a decision reported in **Y. Sham Kumar V. State of AP**³, this Court by considering the facts of the case therein concluded that the offence, if any, committed was only by the first accused but not by any other accused and quashed the proceedings against A2 to A12 therein.

11. In a decision reported in **Gorige Pentaiah vs. State Of A.P. & Ors**⁴, the Hon'ble Supreme Court of India held as follows:

³ 2013 (1) ALD (CRL.) 652 (AP)

⁴ 2008 AIR SCW 6910



“Inherent powers under [section 482](#) Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute.”

12. A meticulous perusal of the contents of the complaint reveals force in the submissions of the learned counsel for the Petitioner/A.3. The matter requires to be investigated against A.1 and A.2. There are absolutely valid legal grounds emanating from the record warranting interference of this Court under Section 482 Cr.P.C to quash the proceedings against Petitioner/A.3 in the above crime. Therefore, the continuation of investigation for the aforesaid offence against petitioner/A.3 would amount to an abuse of process of the Court.

13. In view of the guideline No.3 in *State of Haryana Vs. Bhajanlal* (supra), where the 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 petitioner/A.3.



14. Therefore, this Court is of the view that initiation of criminal proceedings against petitioner/A.3 is undesirable and the same is liable to be quashed.

15. Resultantly, the Criminal Petition is allowed. The criminal proceedings initiated against the petitioner/A.3 in Crime No.249 of 2013 of I Town Police Station, Nellore, are hereby quashed.

As a sequel, the miscellaneous petitions, pending if any, shall stand disposed of.

JUSTICE DUPPALA VENKATA RAMANA

14.06.2023

DNS

*Mjl/ **

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HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA

CRIMINAL PETITION No.15330 OF 2013

14.06.2023

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