



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

[3327]

**TUESDAY, THE TWENTY EIGHTH DAY OF APRIL
TWO THOUSAND AND TWENTY SIX**

PRESENT

THE HONOURABLE SRI JUSTICE K SREENIVASA REDDY

CRIMINAL PETITION Nos:9291 of 2023 and 9292 of 2023

Criminal Petition No:9291 of 2023

Between:

1.SANDEEP USMAN,, S/O USMAN MOHAMMAD, AGED 41 YEARS,
OCC BUSINESS, R/O. D.NO.29-28-1/22, KOVELAMUDIVARI
STREET, VIJAYAWADA, O/O D.NO.6-88, LUCKY HUNDAI SHOW
ROOM, OPP TANKASALA KALYANAMANDAPAM, ENIKEPADU,
VIJAYAWADA, YANAMALAKUDURU POLICE STATION LIMITS

...PETITIONER/ACCUSED

AND

1.THE STATE OF ANDHRA PRADESH, REP BY ITS PUBLIC
PROSECUTOR HIGH COURT OF ANDHRA PRADESH

2.YAKKALA HARISH, S/O YAKKALA PRASADA RAO, AGED 39 YRS,
OCC EMPLOYEE, GANJAMVARI STREET, KAKINADA, REP. BY HIS
GPA HOLDER AND FATHER, MR. YAKKALA PRASADA RAO, S/O
LATE KRISHNA MURTHY, AGED 63 YRS, OCC BUSINESS, R/O.
D.NO. 25-6-12/1, GANJAMVARI STREET, KAKINADA, 1 TOWN P.S.
LIMITS, E.G. DIST.

...RESPONDENT/COMPLAINANT(S):

Petition under Section 437/438/439/482 of Cr.P.C and 528 of BNSS
praying that in the circumstances stated in the Memorandum of Grounds of
Criminal Petition, the High Court may be pleased to set aside the order dated
21.09.2023 in CrI.M.P No.3100 of 2023 in CC No. 40 of 2021 on the file of the
Hon'ble Court of III Addl. Judicial Magistrate of First Class, Kakinada and

consequently direct the Hon'ble Court of III Addl. Judicial Magistrate of First Class, Kakinada to recall the witness i.e. PW1 in CC No. 40 of 2021

IA NO: 1 OF 2023

Petition under Section 482 of Cr.P.C and 528 of BNSS praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased may be pleased to dispense with the filing of the certified copy of the order dated 21.09.2023 passed in Crl.M.P No.3100 of 2023 in CC No. 40 of 2021 on the file of the Hon'ble Court of III Addl. Judicial Magistrate of First Class, Kakinada, as the Petitioner herein could not produce the same at the time of filing of the above mentioned criminal petition;

IA NO: 2 OF 2023

Petition under Section 482 of Cr.P.C and 528 of BNSS praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased may be pleased to stay all the further proceedings in CC No. 40 of 2021 on the file of the Hon'ble Court of III Addl. Judicial Magistrate of First Class, Kakinada, pending disposal of the Criminal Petition

Counsel for the Petitioner/accused:

1. VARUN BYREDDY

Counsel for the Respondent/complainant(S):

1. PUBLIC PROSECUTOR (AP)
2. A K KISHORE REDDY

Criminal Petition No:9292 of 2023

Between:

- 1.SANDEEP USMAN, S/O USMAN MOHAMMAD, AGED 41 YEARS, OCC BUSINESS, R/O. D.NO.29-28-1/22, KOVELAMUDIVARI STREET, VIJAYAWADA, O/O D.NO.6-88, LUCKY HUNDAI SHOW ROOM, OPP TANKASALA KALYANAMANDAPAM, ENIKEPADU, VIJAYAWADA, YANAMALAKUDURU POLICE STATION LIMITS

...PETITIONER/ACCUSED

AND

- 1.THE STATE OF ANDHRA PRADESH, REP BY ITS PUBLIC PROSECUTOR HIGH COURT OF ANDHRA PRADESH
- 2.YAKKALA HARISH, S/O YAKKALA PRASADA RAO, AGED 39 YRS, OCC EMPLOYEE, GANJAMVARI STREET, KAKINADA, REP. BY HIS GPA HOLDER AND FATHER, MR. YAKKALA PRASADA RAO, S/O LATE KRISHNA MURTHY, AGED 63 YRS, OCC BUSINESS, R/O. D.NO. 25-6-12/1, GANJAMVARI STREET, KAKINADA, 1 TOWN P.S. LIMITS, E.G. DIST.

...RESPONDENT/COMPLAINANT(S):

Petition under Section 437/438/439/482 of Cr.P.C and 528 of BNSS praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Courtpleased to set aside the order dated 21.09.2023 in Crl.M.P No. 3101 of 2023 in CC No. 40 of 2021 on the file of the Hon'ble Court of 111 Addl. Judicial Magistrate of First Class, Kakinada and consequently direct the Hon'ble Court of 111 Addl. Judicial Magistrate of First Class, Kakinada to reopen the evidence of the witness i.e. PW1 in CC No. 40 of 2021 and pass

IA NO: 1 OF 2023

Petition under Section 482 of Cr.P.C and 528 of BNSS praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition,the High Court may be pleased pleased to dispense with the filing of the certified copy of the order dated 21.09.2023 passed in Crl.M.P No. 3101 of 2023 in CC No. 40 of 2021 on the file of the Hon'ble Court of III Addl. Judicial Magistrate of First Class, Kakinada, as the Petitioner herein could not

produce the same at the time of filing of the abovementioned criminal petition; and pass

IA NO: 2 OF 2023

Petition under Section 482 of Cr.P.C and 528 of BNSS praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to stay all the further proceedings in CC No. 40 of 2021 on the file of the Hon'ble Court of III Addl. Judicial Magistrate of First Class, Kakinada, pending disposal of the Criminal Petition; and pass

Counsel for the Petitioner/accused:

1. VARUN BYREDDY

Counsel for the Respondent/complainant(S):

1. PUBLIC PROSECUTOR (AP)

2. A K KISHORE REDDY

The Court made the following Common Order:

1. Criminal Petition No.9291 of 2023 is filed challenging the Order dated 21.09.2023 passed in Crl.M.P.No.3100 of 2023 in C.C No.40 of 2021 on the file of the III Additional Judicial Magistrate of First Class, Kakinada, whereby petition filed by the petitioner/accused under Section 311 CrPC seeking to recall P.W.1, for the purpose of cross-examination, was dismissed by the Court below.

2. Criminal Petition No.9292 of 2023 is filed challenging the Order dated 21.09.2023 passed in Crl.M.P.No.3101 of 2023 in C.C No.40 of 2021 on the file of the III Additional Judicial Magistrate of First Class, Kakinada, whereby petition filed by the petitioner/accused under Section 311 CrPC seeking to reopen the evidence of P.W.1, for the purpose of cross-examination, was dismissed by the Court below.

3. Since both the Criminal Petitions are connected, they are being disposed of, by way of this Common Order.

4. Brief facts of the case are that 2nd respondent herein filed a private complaint against the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, alleging as follows.

The petitioner/accused borrowed a sum of Rs.25,00,000/- from 2nd respondent/complainant on 29.06.2017 through a bank transfer and executed a demand promissory note in favour of 2nd respondent/complainant, agreeing to repay the same together with interest at 42% p.a. on demand. The petitioner/accused issued a cheque bearing No.000977, dated 24.12.2019 for an amount of Rs.25,00,000/- drawn on Karur Vysya Bank, Vijayawada as part satisfaction of debt. The said cheque, when presented through the complainant's banker i.e., Karnataka Bank, Ganjamvari Street Branch, Kakinada, was dishonoured on 26.12.2019, with an endorsement "Refer to Drawer". Thereafter, the complainant got issued a legal notice through his

advocate on 06.01.2020 calling upon the accused to pay the amount covered under the above dishonoured cheque. The notice was received by the accused on 13.01.2020, but no payment was made. Hence, the complaint.

5. The complaint was taken on file as C.C No.40 of 2021 on the file of the III Additional Judicial Magistrate of First Class, Kakinada. Trial commenced and PW1 was examined in-chief on 28.11.2022, cross-examined on 10.02.2023 and further cross-examined on 25.07.2023.

6. Subsequently, the accused filed Crl.M.P Nos.3100 and 3101 of 2023 under Section 311 of Cr.P.C., seeking recall PW1 and reopen the evidence of the complainant, for the purpose of further cross-examination on the ground that a vital suggestion had missed during earlier cross-examination. By the impugned Orders, both dated 21.09.2023, the learned Magistrate dismissed the petitions, on the ground that the petitioner failed to specify the reasons or the purpose for which PW1 has to be cross-examined.

7. Heard the learned counsel for both the parties. Perused the record. It is settled law that party who cross-examines the witness has to put forth his defence at a time when witness enters into the evidence box and cannot seek to recall and to reopen merely on the ground that he did not put certain questions or suggestions to the witnesses. Learned counsel for the petitioner submits that the complainant's GPA holder filed the present private complaint, and a vital suggestion with regard to legally enforceable debt missed during cross-examination of P.W.1 and the same is essential for just decision of the case.

8. A perusal of the impugned order goes to show that the learned Magistrate dismissed the petitions on the ground that the aspect on which the petitioner wanted to cross-examine P.W.1 is not mentioned. Learned counsel for the petitioner submits that a vital suggestion with regard to the aspect of legally enforceable debt has missed. In *A.G. Vs. Siva Kumar Yadav and*

*another*¹, the Hon'ble Supreme Court held that for just decision of the case and in order to ensure that the judgment should not be rendered on *in choate*, inconclusive and speculative presentation of facts, a witness can be recalled. The paramount requirement is to come to a just decision of the case. The reason assigned by the petitioner is sufficient to exercise the discretionary power under Section 311 CrPC.

9. In view of the above said facts and circumstances of the case, the Criminal Petitions are allowed, setting aside the impugned Orders. Consequently, Crl.M.P Nos.3100 of 2023 and 3101 of 2023, both in C.C No.40 of 2021 on the file of the III Additional Judicial Magistrate of First Class, Kakinada, stand allowed. The learned Magistrate is directed to reopen the evidence on complainant's side and recall PW1 by fixing a date with regard to the cross-examination by the petitioner, on which date, the learned counsel for the petitioner shall complete cross-examination without seeking any further adjournment. The learned Magistrate is further directed to dispose of C.C No.40 of 2021, in accordance with law, within a period of two (02) months thereafter.

Miscellaneous petitions pending, if any, in the Criminal Petitions shall stand closed.

JUSTICE K. SREENIVASA REDDY

Date:28.04.2026
Ksj/DRK

¹ AIR 2015 Supreme Court 3501