

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

FRIDAY, THE SEVENTH DAY OF FEBRUARY TWO THOUSAND AND TWENTY FIVE

:PRESENT:
THE HONOURABLE SMT JUSTICE JUVVADI SRIDEVI

IA No. 1 OF 2025
IN
CRLRC NO: 93 OF 2025

Between:

Syed Khaja Ziauddin, S/o. Syed Khaja Naseeruddin, Occ. Business, R/o. H. No. 11-1-1182/A, Madina Tower II floor, Afzal Sagar, Opp. Mehboob Hospital, Mallepalli, Hyderabad.

...Petitioner/Accused
(Petitioner in CRLRC 93 OF 2025
on the file of High Court)

AND

1. The State of Telangana, Rep. by its Public Prosecutor, High Court at Hyderabad
2. Mohammed Khusrow Ahmed Farooqui, S/o. Mohammed Sabith Ahmed Farooqui, Occ. Business, R/o. H. No. 9-14-142, Ahmed Pura Colony, Nizamabad.

...Complainant/Respondent
(Respondents in-do-)

Counsel for the Petitioner : Sri M A MUJEEB
Counsel for the Respondent No.1: Sri Jithendar Rao Veeramalla, Addl. PUBLIC PROSECUTOR

Petition under Section 528 of BNSS praying that in the circumstances stated in the grounds filed in support of the petition, the High Court may be pleased to stay of all further proceedings in CrI. M.P. No. 57 of 2022 in STC NI No. 204 of 2022 dated. 20.12.2024 passed by the Learned I Additional District Junior Civil Judge Cum I Additional Judicial Magistrate of First Class at Nizamabad, pending disposal of CRLRC No. 93 of 2025, on the file of the High Court.

The Court made the following

ORDER:

This application is filed by the petitioner/accused seeking to grant stay of all further proceedings in STC NI No.204 of 2022 passed by the I Additional Junior Civil Judge-cum-I Additional Judicial Magistrate of First Class at Nizamabad, pending disposal of the criminal petition.

Heard Mr. M.A.Mujeeb, learned counsel for the petitioner and Mr. Jithender Rao Veeramalla, learned Additional Public Prosecutor appearing for the respondent No.1-State.

Learned counsel for petitioner submitted that the respondent No.2 has filed complaint before CCS, Hyderabad for the offences under Sections 406, 420, 465, 468 and 471 of IPC and there is reference of the cheques in question and the respondent No.2 also filed case under Section 138 of NI Act in respect of same cheques. Therefore, the offences under Sections 406, 420, 465, 468 and 471 of IPC and Section 138 of NI Act are two different and distinct offences and the respondent No.2 cannot pursue two remedies for same set-of-facts.

There is no legally enforceable debt in favour of the respondent No.2. The filing of multiple criminal cases on the same set of facts amounts to double jeopardy. While praying for stay of all further proceedings against the petitioner/accused, the learned counsel for the petitioner relied upon a decision in *J.Vedasingh v. R.M.Govindan and Others*¹, at Paragraph No.12 the Hon'ble Supreme Court held as follows:

"12. On perusal of the judgment of Sangeetaben Mahendrabhai Patel (supra) relied in the case of M/S. V.S. Reddy and Sons (supra) by the appellant and the judgments relied upon by the respondents in the case of G. Sagar Suri (supra) and Kolla Veera Raghav Rao (supra) as afore quoted, the facts and the allegations were similar and that too the prosecution for the offences under Section 138 of the NI Act and, under Sections 406 and 420 of the IPC were also similar. In the judgment of Sangeetaben Mahendrabhai Patel (supra) it was held that the requirement to prove an offence under the NI Act and an offence under the IPC is different, and it was observed that there may be some overlapping of facts but the ingredients of the offences are entirely different, therefore, the subsequent cases are not barred by any statutory provisions. While in the case of G. Sagar Suri (supra) and Kolla Veera Raghav Rao (supra), the Court concluded that as per Section 300(1) Cr.P.C. no one can be tried and convicted for the same offence or even for a different offence on the same facts, therefore, the prosecution under Section 420 of the IPC is barred by Section 300(1) of Cr.P.C and accordingly liable to be quashed. It is to observe that in the case of Sangeetaben Mahendrabhai Patel (supra) the judgments of G. Sagar Suri (supra) and Kolla Veera Raghav Rao (supra) have been referred but distinguished on the ground that it was not raised and decided that ingredients of both offences were not same, and the bar of Section 300(1) of Cr.P.C. would not attract. It is relevant to note here that the judgments cited by both the parties are rendered by benches having the strength of two Judges. In our considered view, the bench of this Court in the case of Sangeetaben Mahendrabhai Patel (supra) followed in M/s. V.S. Reddy and Sons (supra) has taken a different view from the previous judgments of G. Sagar Suri (supra) and Kolla Veera Raghav Rao (supra) rendered by the bench of the same strength. The view taken in both the cases are conflicting to each other. Needles to observe that it is a trite law, if any issue is decided in a

¹ CrI.A.-of 2022 arising out of (SLP(CrI) No.2864 of 2019

previous judgment by a bench of the same strength, conflicting view in the subsequent judgment should not be rendered on the pretext that the issue has not been raised or considered in the previous judgment. In this regard the judgment in District Manager, APSRTC, Vijaywada v. K. Sivaji, (2001) 2 SCC 135, Chandra Prakash v. State of U.P., 2002 AIR SCW 1573 can be profitably referred whereby it is observed that judicial decorum demands that if judgments passed by two-judges' bench of equal strength are conflicting, the issue of law involved must be referred to a larger bench as the same is desirable to avoid confusion and maintain consistency of law. In our view, the aforesaid judgments cited by the respective parties are conflicting, however, to avoid any further confusion and to maintain consistency, we deem it appropriate to refer this issue for decision by the larger bench to answer the following questions:

(1) Whether the ratio of the judgment, in the case of G. Sagar Suri (supra) and Kolla Veera Raghav Rao (supra) lay down the correct law?

or The view taken in the case of Sangeetaben Mahendrabhai Patel (supra) as followed in M/s V.S. Reddy and Sons (supra) which is subsequent and conflicting, lay down the correct proposition of law?

(2) Whether on similar set of allegations of fact the accused can be tried for an offence under NI Act which is special enactment and also for offences under IPC unaffected by the prior conviction or acquittal and, the bar of Section 300(1) Cr.P.C. would attract for such trial?"

On the other hand, learned Additional Public Prosecutor opposed the application stating that specific allegations are levelled against the petitioner.

Having regard to the facts and circumstances of the case and the submissions made by either side and on perusal of record, it is apparent that two cases have been filed with same set-of-facts in respect of cheques in question. It is settled law that no multiple cases shall be registered on the same set of facts which amounts to double jeopardy.

In view of the submissions made by the learned counsel for the petitioner, this matter requires detailed examination.

In the said circumstances, there shall be stay of all further proceedings in STC NI No.204 of 2022 passed by the I Additional Junior Civil Judge-cum-I Additional Judicial Magistrate of First Class at Nizamabad, till 27.03.2025.

//TRUE COPY//

Sd/- L. LAXMI BABU
ASSISTANT REGISTRAR

SECTION OFFICER

To,

1. The I Additional District Junior Civil Judge cum I Additional Judicial Magistrate of First Class at Nizamabad.
2. Mohammed Khusrow Ahmed Farooqui, S/o. Mohammed Sabith Ahmed Farooqui, Occ. Business, R/o. H. No. 9-14-142, Ahmed Pura Colony, Nizamabad.(By RPAD)
3. One CC to SRI M A MUJEEB Advocate [OPUC]
4. Two CCs to PUBLIC PROSECUTOR, High Court at Hyderabad. (OUT)
5. One spare copy

Note: In the first and last para of the order the words "CrI.M.P.No.57 of 2022 in STC NI No.204 of 2022, dated 20-12-2024" is replaced with "STC NI No.204 of 2022" as per court order dated 06-03-2025 made in I.A.No.2 of 2025.

Substitute this amended order in place of previous order which was already dispatched 12-02-2025.

Sd/- L. LAXMI BABU
ASSISTANT REGISTRAR

HIGH COURT

JS,J

DATED:07/02/2025
06/03/2025

AMENDED
ORDER

I.A.NO.1 OF 2025
IN
CRLRC.No.93 of 2025

STAY

