

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

**MONDAY, THE TENTH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY FIVE**

PRESENT

THE HONOURABLE SRI JUSTICE J SREENIVAS RAO

CRIMINAL PETITION NO: 7469 OF 2023

Between:

Katukam Nagaraju, S/o Katukam Shankaraiah, Aged 52 years, Occ. Business, R/o H. No 34-59, Mallikarjuna Nagar, Kyathanpalli village, Ramakrishnapuram, Mandamarri Mandal, Mancherla District,

...PETITIONER/ACCUSED

AND

1. The State of Telangana, Represented by its Public Prosecutor, High Court of TS, Hyderabad.
2. M/s AB Constructions, through Reg. No 226/2019, Represented by its partners Anvesh Kumar Gulavath, S/o Bapu Rao and Ambika Gulavath, W/o Bapu Rao, both are R/o H. No 1-2-47/23/64/A/84, Sri Ram Colony, Ankoli Road, Adilabad, Adilabad District.

...RESPONDENT/COMPLAINANTS

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 quash the STC N.I. No. 80 of 2022 on the file of the Judicial First Class Magistrate, at Adilabad against to petitioner/accused herein and pass.

I.A. NO: 1 OF 2023

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 all further proceedings including appearance of the petitioner/accused in the STC N.I.No. 80 of 2022 on the file of the Judicial First Class Magistrate, at Adilabad, until pending disposal of the criminal petition and pass.

This Petition coming on for hearing, upon perusing the Memorandum of Grounds of Criminal Petition and upon hearing the arguments of Sri K MALLIKARJUN, Advocate for the Petitioner and Sri M.Vivekananda Reddy, the Assistant Public Prosecutor on behalf of the Respondent No.1 and none appeared for the Respondent No.2.

The Court made the following: ORDER

THE HONOURABLE SRI JUSTICE J. SREENIVAS RAO

CRIMINAL PETITION No. 7469 of 2023

ORDER:

This criminal petition has been filed by the petitioner/accused seeking to quash the proceedings in STC.N.I.No.80 of 2022 on the file of the Judicial First Class Magistrate at Adilabad for the offence punishable under Section 138 of the Negotiable Instruments Act, 1989 (for short, 'the N.I. Act')

2. The brief facts of the case are that respondent No.2 filed a private complaint before the Judicial First Class Magistrate at Adilabad invoking the provision of Section 200 of the Cr.P.C. stating that Smt. Ambika Gulavath, who is one of the partners in respondent No.2 Company, entered into an agreement on 09.07.2021 with the petitioner for construction of houses in Survey No.163/A, Jankapur Village and Mandal, Komurambheem Asifabad District, whereby, the petitioner undertook to pay an amount of Rs.82,56,000/- (Rupees Eighty-Two Lakhs Fifty-Six Thousand only) to it. The said agreement was executed in the presence of witnesses. In pursuance of the said undertaking, the petitioner issued two cheques in favour of respondent No. 2 constructions and Smt. Ambika Gulavath, both dated 01.11.2021, for an amount of Rs.35,00,000/- and Rs.40,00,000/- respectively, drawn on Indian Overseas Bank, Mancherla Branch, towards discharge of legally enforceable debt arising under the agreement dated 09.07.2021. When respondent No. 2 presented the said cheques on 18.11.2021 for encashment, both cheques were returned unpaid on 22.11.2021 with

the endorsement "Funds Insufficient". Thereafter, respondent No.2 issued a legal notice on 03.12.2021 through their advocate calling upon the petitioner to make payment of the cheque amounts within 15 days from the date of receipt. The notice was duly served on 06.12.2021 as evidenced by the postal acknowledgment and online tracking report. The petitioner, instead of making payment, issued a reply on 15.12.2021 containing false statements and without denying issuance of the cheques. Since the petitioner failed to make payment even after expiry of the statutory period on 21.12.2021, respondent No.2 was constrained to file the present complaint under Section 138 of the Negotiable Instruments Act within the prescribed limitation period.

3. Heard Mr. K. Mallikarjun, learned counsel for the petitioner, Mr. K. Ajay Kumar, learned counsel for respondent No.2, and Mr. M. Vivekananda Reddy, learned Assistant Public Prosecutor appearing for respondent No.1 State.

4. Learned counsel for the petitioner submitted that the petitioner has not issued any cheques to respondent No.2 and that he has issued post-dated cheques in favour of Ambika Guglavath, pursuant to the undertaking dated 09.07.2021 towards security for an amount of Rs.82,56,000/- and there is no privity of contract between respondent No.2 and the petitioner. Hence, the offence under Section 138 of the NI Act is not attracted, in view of Sections 58 and 118 of the NI Act. He further submitted that in the sworn statement, Ambika Guglavath specifically stated that the cheques were issued pursuant to the

undertaking dated 09.07.2021, however, respondent No.2 Constructions filed a private complaint against the petitioner, though the ingredients of Section 138 of the NI Act do not attract. There is no legally enforceable debt between the petitioner and respondent No.2. Hence, the continuation of the proceedings against the petitioner is a clear abuse of the process of law.

4.1. In support of his contention, he relied upon the judgment of the Hon'ble Supreme Court in **Ashok Yeshwant Badeve v. Surendra Madhavarao Nighojakar and another**¹.

5. *Per contra*, learned counsel for respondent No.2 submitted that Ambika Guglavath is a partner of M/s.AB Constructions. The petitioner had issued the cheques in the name of the M/s.AB Constructions for legally enforceable debt only. Respondent No.2, after following the statutory procedure as prescribed under the provisions of the NI Act, lodged the complaint and the learned Magistrate after recording the sworn statement and after going through the material, which was enclosed along with the complaint, has taken cognizance and issued summons. Whether the petitioner had issued the cheques towards legally enforceable debt or for the purpose of security, these are disputed questions of fact and the same have to be adjudicated and decided by the trial Court after full-fledged trial. Relying upon the grounds, which are raised by the petitioner in the present case, the petitioner is not entitled to seek quashing of the proceedings.

¹ AIR 2001 SC 1315

6. Having considered the rival submissions made by the respective parties and after perusal of the material available on record, it is revealed that respondent No.2 filed a private complaint on 28.01.2022 under Section 200 of the Cr.P.C. against the petitioner. In the said complaint, respondent No.2 specifically stated that the petitioner had issued two cheques for an amount of Rs.35,00,000/- and Rs.40,0,000/- in the name of M/s. AB Construction to discharge legal debt and the said cheques were presented in the bank and the same were returned on 22.11.2021 on the ground of 'Funds Insufficient'. The record further reveals that respondent No.2 issued a statutory notice on 03.12.2021 and thereafter, filed the complaint. Whether the cheques were issued by the petitioner towards security or legally enforceable debt, the said aspects have to be decided after full-fledged trial only.

7. Insofar as the other contention raised by learned counsel for the petitioner that there is no privity of contract between the petitioner and respondent No.2 and the said cheques were issued in favour of Ambika Guglavath towards security purpose is concerned, the Xerox copies of the cheques enclosed along with the present criminal petition cheques stand in the name of M/s.AB Constructions and the Ambika Guglavath is one of the partners in M/s.AB Constructions and the aspect is also a disputed question of fact and the petitioner is entitled to raise the said aspect before the trial Court during trial.

8. In **Ashok Yeshwant Badave** *supra*, the Hon'ble Supreme Court held that a post-dated cheque becomes a valid cheque only on the date

written on it, and the six-month period for presenting it to the bank should be counted from that date. However, the ratio laid down in the judgment does not apply to this case, as the cheques were given by the petitioner as part of an agreement dated 09.07.2021 and were meant to pay a legally due amount. The cheques were not post-dated or presented late. The petitioner's claim that the cheques were 'backdated' and that there was no contract between the parties is not correct, because the record clearly shows that there was an agreement and that the cheques were issued according to it.

9. It is trite law that once the issuance of the cheque is not in dispute, a statutory presumption under section 139 of the N.I. Act operates in favour of the payee that the cheque has been issued towards discharge of a legally enforceable debt or liability. However, such presumption is rebuttable and the drawer is entitled to present a plausible defense that the cheque was not issued to discharge a legally enforceable debt or liability.

10. For the foregoing reasons, this Court does not find any ground to quash the proceedings in STC.N.I. No.80 of 2022 on the file of the Judicial First Class Magistrate at Adilabad.

11. Accordingly, the Criminal Petition is dismissed. However, taking into consideration the peculiar facts and circumstances of the case, the presence of the petitioner before the trial Court in STC.N.I.No.80 of 2022 is dispensed with, unless his presence is specifically required during the

course of trial, subject to the condition that the petitioner shall be represented by his Counsel on each and every date of hearing. In case of non-appearance of the petitioner on specific date so fixed by the trial Court, the learned trial Court is entitled to proceed with the matter in accordance with law. It is made clear that any of the observations made in this order are only confined for the purpose of deciding this case.

Miscellaneous applications, pending if any, shall stand closed.

SD/- A PRATHIMA
DEPUTY REGISTRAR

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SECTION OFFICER

To,

1. The Judicial First Class Magistrate, at Adilabad,
2. Two CCs to the PUBLIC PROSECUTOR, High Court at Hyderabad. (OUT)
3. One CC to SRI K MALLIKARJUN Advocate [OPUC]
4. Two CD Copies

TPK/ABK

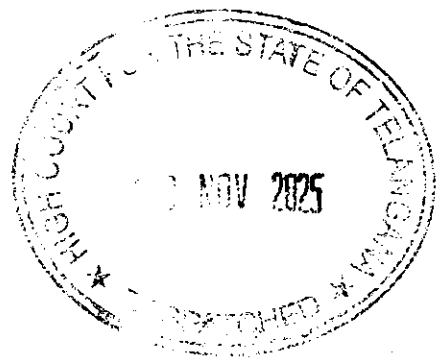
ABK

HIGH COURT

DATED:10/11/2025

ORDER

CRLP.No.7469 of 2023



CRIMINAL PETITION IS DISMISSED

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13/11/25