

**(2025) 12 AP CK 0007**

**Andhra Pradesh HC**

**Case No:** Criminal Revision Case No: 122 Of 2008

Saladi Sriranga Rao

APPELLANT

Vs

Dontu Maheswara Rao & Ors

RESPONDENT

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**Date of Decision:** Dec. 10, 2025

**Acts Referred:**

- Indian Penal Code, 1860 - Section 324, 420, 506(2)
- Code Of Criminal Procedure, 1973 - Section 200

**Hon'ble Judges:** Subhendu Samanta, J

**Bench:** Single Bench

**Advocate:** P Durga Prasad, T B L Murthy

**Final Decision:** Dismissed

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### **Judgement**

Subhendu Samanta, J

1. The Petitioner filed a private complaint against the Respondent No.1 under Sections 420, 324 and 506 (2) of IPC, the same was forwarded to the S.H.O concerned for investigation, but the Police after conducting investigation referred the case as non-cognizable. Against which, the present Petitioner has filed a protest petition. In support of protest petition he examined himself with two other witnesses under Section 200 of Cr.P.C. After hearing the Petitioner and also taking evidences of the witnesses at this stage, learned Magistrate passed impugned order and held no sufficient materials existed against the accused for proceeding in a Criminal Case under Sections 420, 324 and 506(2) of IPC. Against such impugned order, the instant Criminal Revision has been preferred.

2. Learned counsel for the Petitioner submits that learned Magistrate concerned has not properly gone through the complaint as well as protest petition and thereby illegal order has been passed. He further submits that the observation of learned Court below regarding the non submission of medical paper to prove the offence punishable under Section 324 of IPC is illegal. He further submits that the two

witnesses have supported the complainant, accordingly, learned Magistrate should have take cognizance against the Respondent No.1. He prayed for setting aside the impugned order and direction upon learned Magistrate concerned to proceed against Respondent No.1.

3. Learned counsel for the Respondent No.1 submits that there are no materials placed before learned Magistrate to proceed under Section 420, 324 and 506(2) of IPC. He submits that on plain reading of the complaint it would be revealed that there was a dispute between Petitioner and Accused regarding non-payment of purchased black gram. The Petitioner himself has deposed that the business was going on since long. Thus, the allegation is purely civil in-nature. He further submits that the statement of the Petitioner as well as other witnesses are contradictory, no medical paper was placed on record regarding the alleged assault. Thus, no such incident happened. Learned Magistrate has carefully gone through evidences and found nothing in proceeding with the matter against the Respondent No.1.

4. Having heard the learned counsel appearing on behalf of the parties and upon perusal of the Judgment of the court below, it appears that learned Magistrate concerned in considering the protest petition against a report filed by the Police has received affidavits of two witnesses. At this stage, when a complaint was forwarded to concerned Police Station for lodging a crime for investigation and same was returned with a report that no cognizable offence has made out in the complaint, the complainant had two options, either to file a protest petition against such Petitioner or complainant may himself proceed on the basis of a complaint by virtue of a private complaint. In that aspect, it is the discretion of the learned Magistrate to deal with the issue whether the complaint and evidence thereon recorded under Section 200 of Cr.P.C is justifiable to take the cognizance against the Accused person.

5. Learned counsel for the Respondent No.1 has placed a decision of Honble Apex Court in **Anukul Singh v. State of Uttar Pradesh and Another** Criminal Appeal No. 4250 of 2025, dated 24.09.2025, the Honble Apex Court relied upon an earlier decision of Honble Apex Court in **State of Haryana and Others v. Bhajan Lal and Others** 1992 Supp.(1) SCC 335 and **Indian Oil Corporation v. M/s NEPC India Ltd** (2006) 6 SCC 738 the Honble Apex Court opined that repayment of a loan money and alleged coercion in execution of a document is civil in-nature.

6. Learned counsel for the Petitioner has also relied on a decision of Honble Apex Court in **Vishnu Kumar Tiwari v. State of Uttar Pradesh** 019 Supreme (SC) 923, wherein at Para 41 held as follows:-

**41. In the facts of this case, having regard to the nature of the allegations contained in the protest petition and the annexures which essentially consisted of affidavits, if the Magistrate was convinced on the basis of the consideration of the final report, the statements under Section 161 of the Code**

that no prima facie case is made out, certainly the Magistrate could not be compelled to take cognizance by treating the protest petition as a complaint. The fact that he may have jurisdiction in a case to treat the protest petition as a complaint, is a different matter. Undoubtedly, if he treats the protest petition as a complaint, he would have to follow the procedure prescribed under Section 200 and 202 of the Code if the latter Section also commends itself to the Magistrate. In other words, necessarily, the complainant and his witnesses would have to be examined. No doubt, depending upon the material which is made available to a Magistrate by the complainant in the protest petition, it may be capable of being relied on in a particular case having regard to its inherent nature and impact on the conclusions in the final report. That is, if the material is such that it persuades the court to disagree with the conclusions arrived at by the Investigating Officer, cognizance could be taken under Section 190(1) (b) of the Code for which there is no necessity to examine the witnesses under Section 200 of the Code. But as the Magistrate could not be compelled to treat the protest petition as a complaint, the remedy of the complainant would be to file a fresh complaint and invite the Magistrate to follow the procedure under Section 200 of the Code or Section 200 read with Section 202 of the Code. Therefore, we are of the view that in the facts of this case, we cannot support the decision of the High Court.

7. On perusal of the observation of the Honble Apex Court, it appears to me that the Magistrate has discretion to entertain a private complaint after the same being returned from the concerned Police Officer to be non cognizable. Honble Apex Court has specifically disclosed that in exercising of such discretion, learned Magistrate shall go through the Affidavits placed by the complainant as well as witnesses at this stage.

8. In this particular case, the Petitioner has examined along with two other witnesses. On plain perusal of the Petitioners case, it appears that the business between the Petitioner and the Accused person was running since long on credit basis. The dispute is with regard to non-payment of earlier debt and maintaining the business is not a new one to the Petitioner and the Accused person. So if the statement of the complainant is taken to be true, then also an offence punishable under Section 420, 506(2) of IPC is not justifiable. In my view, allegation of non-payment of earlier due arising out of running business between parties does not always call for criminal liability.

9. In deciding the issue regarding any prima facie ingredients for the offence punishable under Section 324 of IPC, learned Magistrate is of the opinion that no medical document was placed on behalf of the Petitioner. It appears that the Petitioner other two witnesses has stated about the assault. The nature of alleged assault as stated by the Petitioner as well as other witnesses is beating by a bamboo stick; such assault if attributed there may be some injury, but no such injury report

was found on record.

10. I make it clear that taking cognizance of an offence is discretion of Magistrate concerned; whether learned Magistrate has exercised discretion properly or not, is to be looked into. In this matter, it appears that the Magistrate concerned has justifiable exercise the discretion and passed the impugned order in accordance with law. I find no justification to interfere with the said order.

11. Accordingly, the instant Criminal Revision Case is dismissed as devoid of merit.

As a sequel, miscellaneous applications pending, if any, shall stand closed.