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**(2013) 06 AP CK 0020**

**Andhra Pradesh High Court**

**Case No:** Criminal P. No. 1874 of 2013

Mamidi Prasanthi

APPELLANT

Vs

State of Andhra  
Pradesh and Another

RESPONDENT

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**Date of Decision:** June 14, 2013

**Citation:** (2013) 2 ALD(Cri) 699

**Hon'ble Judges:** B. Seshasayana Reddy, J

**Bench:** Single Bench

**Advocate:** N. Vijay, for the Appellant; K. Chidambaram for the Respondent No. 2, for the Respondent

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### **Judgement**

@JUDGMENTTAG-ORDER

B. Seshasayana Reddy, J.

This criminal petition has been taken out u/s 482 of Cr.P.C. by the accused in CC No. 573 of 2012 on the file of the Judicial First Class Magistrate, Jangareddigudem, West Godavari District, to quash the proceeding therein. Second respondent is the complainant in CC No. 573 of 2012. He presented a complaint against the petitioner alleging inter alia that the petitioner borrowed an amount of Rs. 2,25,000/- for her business on 9.8.2009 promising to repay the same at 24% interest. Subsequently, the petitioner issued a cheque bearing No. 119995 dated 4.5.2011 for Rs. 2,00,000/- towards part payment of the amount due to him. He presented the cheque and the said cheque came to be bounced on the ground of "Closure of the Account". He approached the petitioner and informed her about the return of cheque. The petitioner requested him to present the cheque once again for collection. Accordingly, he represented the cheque on 2.7.2011 for collection through Costal Local Area Bank Limited, Jangareddigudem. The cheque came to be returned on 6.7.2011 for the reason "Account number required". He issued notice to the petitioner calling upon her to pay the cheque amount. The petitioner received the said notice on 17.8.2011 and issued a reply on 24.8.2011 disputing her liability. Hence, he filed a complaint against the petitioner for the offence u/s 138 read with 142 of the

Negotiable Instruments Act, 1881. The complaint filed by him has been taken on file by the Judicial First Class Magistrate, Jangareddigudem as CC No. 573 of 2012. Hence, this petition by the accused in CC No. 573 of 2012 on the file of the Judicial First Class Magistrate, Jangareddigudem, to quash the proceeding therein.

2. Heard learned Counsel appearing for the petitioner and learned Counsel appearing for the first respondent-State.

3. It is contended by the learned Counsel appearing for the petitioner that the second respondent-complainant presented the cheque for encashment on 9.5.2011 and the said cheque came to be bounced for the reason of "Closure of Account". Once the cheque came to be returned for the reason of account being closed, question of re-presenting the selfsame cheque does not arise. In a way it is his contention that the cheque came to be re-presented to overcome the period of limitation prescribed under the proviso to Section 138(b) of the Negotiable Instruments Act, 1881.

4. The factual aspect of the cheque being returned on 9.5.2011 on the ground of closure of account is not disputed by the Counsel appearing for the second respondent-complainant. Once the cheque has been returned on the ground of closure of account, question of re-presenting the cheque does not arise. Admittedly, statutory notice calling upon the petitioner to pay the cheque amount has been issued after expiry of the period provided u/s 138(b) of the Negotiable Instruments Act, 1881. Therefore, the complaint filed by the second respondent-complainant before the Judicial First Class Magistrate, Jangareddigudem, apparently barred by limitation. In that view of the matter, I find that the continuance of the proceedings against the petitioner in CC No. 573 of 2012 on the file of the Judicial First Class Magistrate, Jangareddigudem, amounts to abuse of process of Court. Accordingly, the criminal petition is allowed, quashing the proceedings in CC No. 573 of 2012 on the file of the Judicial First Class Magistrate, Jangareddigudem. As sequel to it, miscellaneous petitions, if any, pending, shall stand dismissed.